

# TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1917

No. 110

LEE WILSON & COMPANY, APPELLANT,

VS.  
THE UNITED STATES

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA  
Circuit Court of Appeals for the District of Columbia

(25,157)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 393.

LEE WILSON & COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT.

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a Pleas and Proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1915, of said Court, Before the Honorable Walter H. Sanborn and the Honorable John E. Carland, Circuit Judges, and the Honorable Robert E. Lewis, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,  
*Clerk of the United States Circuit Court of  
Appeals for the Eighth Circuit.*

Be it Remembered that heretofore, to-wit: on the twenty-fourth day of July, A. D. 1914, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Arkansas, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein Lee Wilson & Company is Appellant and the United States is Appellee, which said transcript of record as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

1 *Caption to Transcript.*

In the District Court of the United States for the Eastern Division of the Eastern District of Arkansas.

Be it remembered, that on the 4th day of August, A. D. 1911 a Bill of Complaint was filed in the Clerk's office of said court, the record entry on filing said Bill of Complaint being in words and figures following, to-wit:

August 4th, 1911.

No. 283.

UNITED STATES OF AMERICA, Complainant,  
vs.

LEE WILSON & COMPANY, E. RITTER et al., Defendants.

Now this day comes the complainant, by its United States Attorney and Solicitor, and files herein its original bill, whereupon subpoena ad respondendum was issued, returnable within twenty days.

*Record Entry on Filing Appellant's Præcipe for Record.*

July 4, 1914.

On this day comes the appellant, by its solicitors, Messrs. Coleman & Lewis, and files herein its præcipe for record.

*Appellant's Præcipe for Record on Appeal.*

The Clerk will please incorporate in the transcript on appeal the following portions of the record, to-wit:

1. Complaint.
2. Answer and Amendment to Answer.
3. Plaintiff's Exhibit A.
4. Plaintiff's Exhibit CC.
5. Plaintiff's Exhibit DD.
6. Defendant's Exhibit 6.
7. Defendant's Exhibit 7.
8. Defendant's Exhibit 9.
9. Defendant's Exhibit 12.
10. Defendant's Exhibit 13.
- 2 11. Defendant's Exhibit 14.
12. Defendant's Exhibit 15.
13. Defendant's Exhibit 16.
14. Defendant's Exhibit 17.
15. Defendant's Exhibit 18.
16. Defendant's Exhibit 19.
17. Defendant's Exhibit 20.
18. Defendant's Exhibit 21.
19. Defendant's Exhibit 23.
20. Defendant's Exhibit 24.
21. Defendant's Exhibit 25.
22. Defendant's Exhibit 26.
23. Defendant's Exhibit 27.
24. Exhibit C to defendant's answer.
25. Exhibit D. to defendant's answer.
26. Exhibit E to defendant's answer.
27. Condensed statement of the evidence.
28. The decree.
29. The petition for allowance of appeal, and order allowing appeal.
30. Assignment of errors.
31. Bond on appeal.
32. Citation with acknowledgment of service.
33. Order reciting the filing of the petition for allowance of appeal, assignment of errors, bond on appeal, citation, and allowance of appeal.

The clerk will omit all formal parts of documents and all certificates.

COLEMAN & LEWIS,  
*Solicitors for Lee Wilson & Company.*

Endorsed: Filed in the District Court on July 4, 1914.

*Condensed Statement of Evidence.*

The defendant, Lee Wilson & Company, submits the following condensed statement of certain exhibits, and of the evidence in the case, to be incorporated by the clerk in the transcript on appeal in lieu of setting out the exhibits and evidence in extenso. The numbers correspond to the numbers in the præcipe for the transcript.

27. Exhibit F to answer. Warranty deed from Wm. B. Waldron and wife to Memphis & St. Louis Railroad Company, executed June 11, 1873, recorded July 11, 1873, purporting to convey all of fractional section 22, T. 12 N., R. 9 E., 416 acres, and all of fractional section 27, T. 12 N., R. 9 E., 493 acres.

28. Exhibit G to answer. List of lands sold to the State of Arkansas on the 23rd of February, 1883, under an overdue tax decree rendered by the Circuit Court of Mississippi County which list contains the following description: All of section 22; N. E.  $\frac{1}{4}$  of section 27; N. W.  $\frac{1}{4}$  of 27, S. W.  $\frac{1}{4}$  of section 27, and S. E.  $\frac{1}{4}$  of 27, T. 12 N., R. 9 E. Acreage not given.

29. Exhibit H to answer. Decree of the Chancery Court of Mississippi County, rendered December 12, 1894, confirming in the Board of Directors of the St. Francis Levee District the title to the following lands: "All of section 22, all of section 27; N.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E."

30. Exhibit I to answer. Deed from the St. Francis Levee District, executed June 6, 1898, recorded June 28, 1898, purporting to convey to Wm. Hunter all of section 22, and all of section 27, T. 12 N., R. 9 E.

31. Exhibit J to answer. Warranty deed from Wm. Hunter and wife to Jas. L. Hale. Executed Oct. 20, 1899, recorded Oct. 24, 1899, purporting to convey the following lands: "All of section 22, T. 12 N., R. 9 E., 640 acres. All of Section 27, T. 12 N., R. 9 E., 640 acres."

32. Exhibit K to answer. Deed from Jas. L. Hale and wife to J. W. Quinn. Executed Oct. 21, 1899, recorded October 24, 1899, purporting to convey an undivided half interest in all of section 22 and all of section 27, T. 12 N., R. 9 E.

33. Exhibit L to answer. Deed from Jas. L. Hale and wife to W. L. Crenshaw and T. M. Cathey, executed Aug. 28, 1900. Recorded Sept. 12, 1900, purporting to convey all of section 22, and all of section 27, T. 12 N., R. 9 E.

34. Exhibit M to answer. Deed from J. W. Quinn, Jas. L. Hale, W. L. Crenshaw and T. M. Cathey to R. E. Lee Wilson and S. A. Beall. Deed executed Nov. 24, 1900, recorded Nov. 26, 1900, purporting to convey all of section 22, and all of section 27, T. 12 N., R. 9 E.

35. Exhibit N and X to answer. Deed from S. A. Beall to R. E. Lee Wilson, executed Sept. 23, 1902, recorded September 24, 1902, purporting to convey all of section 22, all of section 27, and N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

36. Exhibit O to answer. Deed from R. E. Lee Wilson to John Mulroy. Executed July 25, 1903, recorded Sept. 30, 1903, purporting to convey all of section 22, all of section 27, T. 12 N., R. 9 E.

37. Exhibit P to answer. Deed from John Mulroy to Lee Wilson & Company. Deed executed Feb. 2, 1910, recorded Feb. 4, 1910, and purporting to convey all of section 22, T. 12 N., R. 9 E.

38. Exhibit Q to answer. Deed from R. E. Lee Wilson and wife to Lee Wilson & Company. Executed April 10, 1905, and recorded April 14, 1905, purporting to convey all of section 22, all of section 27, and N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of Section 26, T. 12 N., R. 9 E.

39. Exhibit R to answer. Deed from Jas. L. Hale and wife, W. L. Crenshaw and wife, J. W. Quinn and wife and T. M. Cathey and wife to Lee Wilson & Company, executed Jan. 7, 1910. Recorded Jan. 31, 1910, and purporting to convey all of section 22, and all of section 27, T. 12 N., R. 9 E.

40. Exhibit T to answer. Deed from W. B. Waldron and wife to Robt. L. White. Deed executed June 7, 1869. Recorded June 24, 1869, and purporting to convey N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

41. Exhibit U to answer. List of lands forfeited to the State of Arkansas for non-payment of taxes on April 14, 1886, which list includes the following descriptions: All of section 22, T. 12 N., R. 9 E., 640 acres; All of section 27, T. 12 N., R. 9 E., 273 acres; N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E., 160 acres.

42. Exhibit W to answer. Deed from the Board of Directors of the St. Francis Levee District to Wilson & Beall. Executed June 3, 1898, recorded July 6, 1898, purporting to convey N.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  of Section 26 T. 12 N., R. 9 E.

53. Exhibit Y to answer. Deed from R. E. Lee Wilson to S. C. Portis. Executed July 25, 1903, and recorded Sept. 30, 1903, and purporting to convey N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

5 44. Exhibit Z to answer. Decree of the Chancery Court of Mississippi County, rendered at the October term, purporting to confirm the title in S. C. Portis to the N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E. which decree was filed for record in the recorder's office, October 29, 1903.

45. Exhibit AA to answer. Deed from S. C. Portis to Lee Wilson & Company, executed Feb. 1, 1910, recorded Feb. 7, 1910, purporting to convey N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

46. Exhibits BB and S to answer. Certified copy of record of state land office showing issuance of patent from the state to Wm. B. Waldron on February 14, 1859, purporting to convey all of section 26, T. 12 N., R. 9 E. Acres in section not given.

47. Exhibit CC to answer. Certificate of forfeiture to state of Arkansas on April 13, 1888, for the taxes of 1885, of the S.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

48. Exhibit DD to answer. Deed from the state of Arkansas to the St. Francis Levee District. Executed June 20, 1896, recorded

June 26, 1896, purporting to convey S.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

49. Exhibit EE to answer. Certified copy of record of State Land office, showing issuance of patent from the State to Wm. B. Waldron, on February 16, 1859, purporting to convey the N.  $\frac{1}{2}$  of section 36 and fractional section 27, in T. 12, N., R. 9 E., containing in all 613 acres.

50. Exhibit GG to answer. Deed from John Mulroy to Lee Wilson & Company, executed Jan. 25, 1910, recorded Jan. 26, 1910, purporting to convey all of section 27, T. 12 N., R. 9 E., which deed recites that it was made to correct a conveyance from the same grantor to the same grantee, dated Oct. 27, 1903.

51. It is stipulated by council for the respective parties that the patents from the State of Arkansas to Wm. B. Waldron were never recorded, and that the originals have been lost.

52. The evidence introduced by the plaintiff tended to show that no lake existed within the meander line in sections 22, 26 and 27, T. 12 N., R. 9 E., Mississippi County, Arkansas, (except a small shallow pond, not exceeding an acre in extent, in the southwest corner of section 22) at the date of the government survey made in 1841, and approved Oct. 27, 1845, or on Sept. 28, 1850, the date of the swamp land grant, or at the date of the patent of the said township from the United States to the State of Arkansas. The evidence introduced by the defendant tended to show that the area within the said meander line was a non-navigable shallow lake at the dates referred to.

R. E. LEE WILSON testified in substance, as follows:

I am forty-eight years old, and live at Wilson, Mississippi County, Arkansas. I was born five miles west of Wilson, and have lived in that part of the county all my life. Wilson is about six miles from Moon Lake. I am the president of the defendant company, and the principal stockholder. The defendant claims to own sections 22, 26 and 27, T. 12 N., R. 9 E. I purchased those lands on November 24, 1900, from Jas. L. Hale, J. W. Quinn, W. L. Crenshaw and T. M. Cathey. I bought the land on an acreage basis at \$5.50 per acre, and bought and paid for 640 acres in each of those sections. The purchase price was the full market value of the lands at the date of the purchase. I had the title examined by my attorney, and was advised that the area in controversy belonged to the riparian owners, or in other words, that the title to this area was in the parties from whom I purchased. Some while before this I had written to the Commissioner of the General Land Office at Washington, and asked him how I could acquire title to the lands in Mississippi County, which had been meandered in the government survey. I received the following reply:



DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., January 13, 1893.

Address only the Commissioner of the General Land Office.

Mr. R. E. Lee Wilson, Golden Lake, Arkansas.

SIR: In reply to your letter dated December 10, 1892, requesting information in regard to obtaining title to lands situated in lakes and bayous, I have to state that when in the extension of the lines of the public surveys a lake is meandered its area is segregated from the public domain, and beds of meandered lakes or lands covered by the recession of the waters of such lakes since the original survey of the town-ship embracing the same, where the lands or lots bordering upon the lakes have been entered or disposed of by the government, in accordance with the official plats, are not subject to survey and disposal by the United States, for the reason that they belong to the adjacent land owners.

See U. S. Supreme Court decisions in the case of *Hardin vs. Jordan*, 140 U. S., 371.

Very respectfully,

M. M. ROSE,  
*Assistant Commissioner.*

I organized the drainage district which constructed what is called Tyronza Canal. The work was commenced in 1900, but the canal was not completed until the latter part of 1905. The canal begins about one and a half miles west of Osceola, is constructed through the lands in controversy, and has its outlet in Tyronza Bayou. To obtain better drainage for the lands in controversy, I had the canal cut four feet deeper through these lands and from these lands to the outlet, than the canal above these lands. I did this at my own expense, the extra cost to me was about \$2000.00. All the land in controversy was included in the drainage district, and was taxed with drainage assessments. The drainage assessment on section 22, 640 acres, was \$898.56; the assessment on section 27, 640 acres, was \$768.00; the assessment on N.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  of section 26, 160 acres, was \$192.00, and the assessment on the N.  $\frac{1}{2}$  of the S.  $\frac{1}{2}$  of section 26, 160 acres, was \$144.00. These amounts were paid by the defendant on the 21st day of August, 1905. Sections 22 and 27 are also in drainage district No. 8, and have been assessed at the rate of \$8.00 an acre on the basis of 640 acres to the section. The defendant has also paid the state and county taxes on these lands in controversy. It was compelled to pay these taxes or the lands would have been sold. The defendant has also paid the levee taxes on the lands in suit since its purchase of the lands.

Cross-examination.

The total amount of stock of Lee Wilson & Company is \$1,000,000.00. I own about ninety per cent, and the balance is owned by

members of my family. When I bought the sections, nothing was said about fractions. I bought all of 22 and all of 27, and there was 640 acres in each. I had the title examined, and it showed that the parties from whom I purchased derived their title from the St. Francis Levee District. I knew that the unsurveyed lands had not been patented by the government. I did not mean  
8 to say that no patent was issued by the government.

COLEMAN & LEWIS,  
*Solicitors for Lee Wilson & Company.*

Endorsed: Filed in the District Court on March 20, 1914.

Record Entry on Filing appellee's Statement of Evidence, Praeceptum For Transcript And Stipulation.

June 23, 1914.

On this day comes the United States, by its solicitors, Messrs. W. N. Mills, J. A. Tellier and W. H. Martin, U. S. Attorney, and files herein its statement of evidence, praecipe on appeal and stipulation.

#### Appellee's Statement of Evidence.

The defendant, Lee Wilson & Company, submits the following condensed statement of certain exhibits, and of the evidence in the case, to be incorporated by the clerk in the transcript on appeal in lieu of setting out the exhibits and evidence in extenso. The numbers [corresponde] to the numbers in the praecipe for the transcript.

27. Exhibit F to answer. Warranty deed from Wm. B. Waldron and wife to Memphis & St. Louis Railroad Company, executed June 11, 1873, recorded July 11, 1873, purporting to convey all of fractional section 22, T. 12 N., R. 9 E., 416 acres, and all of fractional section 27, T. 12 N., R. 9 E., 493 acres.

28. Exhibit G to answer. List of lands sold to the State of Arkansas on the 23rd of February, 1883, under an overdue tax decree rendered by the Circuit Court of Mississippi County, which list contains the following description: All of section 22; NE  $\frac{1}{4}$  of Section 27; NW  $\frac{1}{4}$  of 27; SW  $\frac{1}{4}$  of Section 27, and SE  $\frac{1}{4}$  of 27, T. 12 N., R. 9 E. Acreage not given.

29. Exhibit H to answer. Decree of the Chancery Court of Mississippi County, rendered December 12, 1894, confirming in the Board of Directors of the St. Francis Levee District the title to the following lands: "All of section 22; all of section 27; N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E."

30. Exhibit I to answer. Deed from the St. Francis Levee District executed June 6, 1898, recorded June 28, 1898, purporting to convey to Wm. Hunter all of section 22 and all of section 27, T. 12 N., R. 9 E.

31. Exhibit J to answer. Warranty deed from Wm. Hunter and wife to Jas. L. Hale. Executed Oct, 1899, rec-

orded Oct. 24, 1899, purporting to convey the following lands: "All of section 22, T. 12 N., R. 9 E., 640 acres. All of section 27, T. 12 N., R. 9 E., 640 acres.

32. Exhibit K to answer. Deed from Jas. L. Hale and wife to J. W. Quinn. Executed Oct. 21, 1899, recorded October 24, 1899, purporting to convey an undivided half interest in all of section 22 and all of section 27, T. 12 N., R. 9 E.

33. Exhibit L to answer. Deed from Jas. L. Hale and wife to W. L. Crenshaw and T. M. Cathey, executed Aug. 28, 1900. Recorded Sept. 12, 1900, purporting to convey all of section 22, and all of Section 27, T. 12 N., R. 9 E.

34. Exhibit M to answer. Deed from J. W. Quinn, Jas. L. Hale, W. L. Crenshaw and T. M. Cathey to R. E. Lee Wilson and S. A. Beall. Deed executed Nov. 24, 1900, recorded Nov. 26, 1900, purporting to convey all of section 22, and all of section 27, T. 12 N., R. 9 E.

35. [Exhibit-] N and X to answer. Deed from S. A. Beall to R. E. Lee Wilson, executed Sept. 23, 1902, recorded September 24, 1902, purporting to convey all of section 22, all of section 27, and N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

36. Exhibit O to answer. Deed from R. E. Lee Wilson to John Mulroy. Executed July 25, 1903, recorded Sept. 30, 1903, purporting to convey all of section 22, all of section 27, T. 12 N., R. 9 E.

37. Exhibit P to answer. Deed from John Mulroy to Lee Wilson & Company. Deed executed Feb. 2, 1910, recorded Feb. 4, 1910, and purporting to convey all of section 22, T. 12 N., R. 9 E.

38. Exhibit Q to answer. Deed from R. E. Lee Wilson and wife to Lee Wilson & Company. Executed April 10, 1905, and recorded April 14, 1905, purporting to convey all of section 22, all of section 27, and N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

39. Exhibit R to answer. Deed from Jas. L. Hale and wife, W. L. Crenshaw and wife, J. W. Quinn and wife and T. M. Cathey and wife to Lee Wilson & Company, executed Jan. 7, 1910. Recorded Jan. 31, 1910, and purporting to convey all of sections 22, and all of section 27, T. 12 N., R. 9 E.

40. Exhibit T to answer. Deed from W. B. Waldron and wife to Robt. L. White. Deed executed June 7, 1869. Recorded June 24, 1869, and purporting to convey N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of Section 26, T. 12 N., R. 9 E.

41. Exhibit U to answer. List of lands forfeited to the State of Arkansas for the non-payment of taxes on April 14, 1886, which list includes the following description: All of section 22, T. 12 N., R. 9 E., 640 acres; all of section 27, T. 12 N., R. 9 E., 273 acres; N.  $\frac{1}{2}$  of Section 26, T. 12 N., R. 9 E., 160 acres.

42. Exhibit W. to answer. Deed from the Board of Directors of the St. Francis Levee District to Wilson & Beall. Executed June 3, 1898, recorded July 6, 1898, purporting to convey N.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

43. Exhibit Y to answer. Deed from R. E. Lee Wilson to S. C. Portis. Executed July 25, 1903, and recorded Sept. 30, 1903, and

purporting to convey N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

44. Exhibit Z to answer. Decree of the Chancery Court of Mississippi County, rendered at the October term, purporting to confirm the title in S. C. Portis to the N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E. which decree was filed for record in the recorder's office, October 29, 1903.

45. Exhibit AA to answer. Deed from S. C. Portis to Lee Wilson & Company, executed Feb. 1, 1910, recorded Feb. 7, 1910, purporting to convey N.  $\frac{1}{2}$  of S.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

46. Same as Appellee's exhibit X, or No. 7 in praecipe.

47. Exhibit CC to answer. Certificate of forfeiture to State of Arkansas on April 13, 1888, for the taxes of 1885, of the S.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

48. Exhibit DD to answer. Deed from the State of Arkansas to the St. Levee District. Executed June 20, 1896, recorded June 26, 1896, purporting to convey S.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.

49. Same as Appellee's Exhibit X or No. 7 in praecipe.

50. Exhibit GG to answer. Deed from John Mulroy to Lee Wilson & Company, executed Jan. 25, 1910, recorded Jan. 26, 1910, purporting to convey all of section 27, T. 12 N., R. 9 E., which deed recites that it was made to correct a conveyance from the same grantor to the same grantee, dated Oct. 27, 1903.

11 51. It is stipulated by counsel for the respective parties that the patents from the State of Arkansas to Wm. B. Waldron were never recorded, and that the originals have been lost.

52. The evidence introduced by the plaintiff tended to show that no lake existed within the meander line in sections 22, 26 and 27, T. 12 N., R. 9 E., Mississippi County, Arkansas, (except a small shallow pond, not exceeding an acre in extent, in the southwest corner of section 22) at the date of the government survey made in 1841, and approved Oct. 27, 1845, or on Sept. 28, 1850, the date of the swamp land grant, or at the date of the patent of the said township from the United States to the State of Arkansas. The evidence introduced by the defendant tended to show that the area within the said meander line was a non-navigable shallow lake at the dates referred to.

The evidence showed that if the area in controversy was not a lake, it was swamp and overflowed land at the respective dates referred to herein. The defendant will not assail the finding of the court as to the non-existence of a lake at the respective dates mentioned.

R. E. LEE WILSON testified in substance, as follows:

I am forty-eight years old, and live at Wilson, Mississippi County, Arkansas. I was born five miles west of Wilson, and have lived in that part of the county all my life. Wilson is about six miles from Moon Lake. I am the president of the defendant company, and the principal stockholder. The defendant claims to own sec-

tions 22, 26 and 27, T. 12 N., R. 9 E. I purchased those lands on November 24, 1900, from Jas. L. Hale, J. W. Quinn, W. L. Crenshaw and T. M. Cathey. I bought the lands on an acreage basis at \$5.50 per acre, and bought and paid for 640 acres in each of those sections. The purchase price was the full market value of the lands at the date of the purchase. I had the title examined by my attorney, and was advised that the area in controversy belonged to the riparian owners, or in other words, that the title to this area was in the parties from whom I purchased. Some while before this I had written to the Commissioner of the General Land Office at Washington, and asked him how I could acquire title to the lands in Mississippi County, which had been meandered in the government survey. (Insert defendant's Ex. 27.) I received the following reply:

12

"Department of the Interior  
General Land Office.

WASHINGTON, D. C., January 13, 1893.

Address only the Commissioner of the General Land Office.

Mr. R. E. Lee Wilson, Golden Lake, Arkansas.

SIR: In reply to your letter dated December 10, 1892, requesting information in regard to obtaining title to the lands situated in lakes and bayous, I have to state that when in the extension of the lines of the public surveys a lake is meandered its area is segregated from the public domain, and beds of meandered lakes or lands uncovered by the recession of the waters of such lake since the original survey of the townships embracing the same, where the lands or lots bordering upon the lakes have been entered or disposed of by the government, in accordance with the official plats, are not subject to survey and disposal by the United States, for the reason that they belong to the adjacent land owners.

See U. S. Supreme Court decision in the case of *Hardin vs. Jordan*, 140 U. S. 371.

Very respectfully,

M. M. ROSE,  
*Assistant Commissioner.*"

I organized the drainage district which constructed what is called Tyronza Canal. The work was commenced in 1900, but the canal was not completed until the latter part of 1905. The canal begins about one and a half miles west of Osceola, is constructed through the lands in controversy, and had its outlet in Tyronza Bayou. To obtain better drainage for the lands in controversy, I had the canal cut four feet deeper through these lands and from these lands to the outlet, than the canal above these lands. I did this at my own expense, the extra cost to me was about \$2000.00. All the land in controversy was included in the drainage district, and was taxed with drainage assessments. The drainage assessment on section 22,

640 acres, was \$898.56; the assessment on section 27, 640 acres, was \$768.00; the assessment on N.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  of section 26, was \$192.00, and the assessment on the N.  $\frac{1}{2}$  of the S.  $\frac{1}{2}$  of section 26, 160 acres, was \$144.00. These amounts were paid by the defendant on the 21st day of August, 1905. Sections 22 and 27 are also in drainage district No. 8, and have been assessed at the rate of 13 \$8.00 an acre on the basis of 640 acres to the section. The defendant has also paid the state and county taxes on the lands in controversy. It was compelled to pay these taxes or the lands would have been sold. The defendant has also paid the levee taxes on the lands in suit since its purchase of the lands.

Cross-examination:

The total amount of stock of Lee Wilson & Company is \$1,000,000.00. I own about ninety per cent, and the balance is owned by members of my family. When I bought the sections, nothing was said about fractions. I bought all of 22 and all of 27, and there was 640 acres in each.

Cross-examination of defendant's witness R. E. Lee Wilson:

Q. Did you have the title examined at the time you bought the interests of these gentlemen, far enough back to ascertain that they had no title to the lands within the meander line?

A. I had the title examined and it showed that they had the title to the lands by the Levee Board title.

Q. That is to say; their title so far as representing any section as an entirety, was deraigned from the Levee Board?

A. Yes, sir.

Q. There was no title so far as you know, to any of the land within the meander line, which can be deraigned by an examination of the records of Mississippi County, by a patent from the United States Government?

A. You mean the unsurveyed lands?

Q. Yes, sir.

A. No, sir.

Q. So that at the time you purchased from the St. Francis Levee Board or any of its grantees, land which purported to be enclosed within the meander line, and when you purchased the lands which may be specifically described as fractional sections about the meander line, you knew that the title which you would acquire did not emanate from the Government by its patent, as unsurveyed lands?

A. I knew that the unsurveyed lands had not been patented by the government?

Redirect examination.

By Mr. Coleman:

Q. You were asked on cross-examination if you did not know when you bought the lands in suit that no patent to that particular land had ever been issued by the United States Government, you had no knowledge of that, of any character, did you?

A. No, sir.

Q. You didn't mean to say that no patent was issued by the Government, did you?

A. No, sir.

Mr. Mills: I object to that as leading.

*Amendment to Appellant's Proposed Condensed Statement of the Evidence.*

Plaintiff proposes the following amendment to the condensed statement of the evidence and exhibits filed by appellant:

CHARLES H. MILLER, testified in substance as follows:

That he was a member of the Miller Engineering Company, of Little Rock, Arkansas, and a graduate of civil engineering in Lehigh University in the class of 1888; that he was a member of the American Society of Engineers, the American Railway Association, and had been employed by the United States Government Engineering Corps for thirteen years engaged in surveying and levee construction work principally in the Mississippi River Valley; that his experience included four years as an engineer with the McClintock-Marshall Construction Company, six years with the Missouri-Pacific-Iron Mountain Railways in charge of drainage work and river protection, and that in the same class of work he had been employed by the Louisville & Nashville, the Frisco, the Illinois Central, the Kansas City Southern and the Mississippi Central Railways, and was at the time he testified, chief engineer of the levee systems at Cairo, Illinois, and that, in addition to his work as engineer on drainage projects in the Mississippi Valley, both in Arkansas and in Missouri, he was consulting engineer for various persons and firms on river protection.

That he visited the lands in controversy, in part, for the purpose of determining what benefits, if any, the area in suit derived by reason of a certain canal which R. E. Lee Wilson, president of the defendant company, caused to be projected across the lands in suit.

He testified: "I found no depression within the unsurveyed area which exceeded a foot or two below the general level. The slope is to the southwest generally from the river. My examination of the canal indicated that it was dug to a proper grade, but not  
15 carried to a proper outlet, evidenced by the fact that at the lower end of the ditch is to be found eighteen or twenty inches of water. The effect of that condition on the land will be that immediately after a heavy rainfall, because of the fact that the ditch conducts the water from the outlet more rapidly than it otherwise would come, overflows the land in the vicinity of the mouth, where the unsurveyed lands (the lands in suit) are located. In case of low water, however, it [was] carry the water off. The lands in suit derive benefit from the canal during the dryer season of the year. The grade of the ditch follows closely the fall of the lands generally. In my opinion the canal has had no influence

whatever in [charging] condition so as to cause the land, bounded by the meander line to become lands in place of a permanent character as they now appear to be. As to the drainage effect of the canal on either side of the canal, I would say that sub-drainage would only possibly influence one hundred feet on either side."

CURTIS J. LITTLE testified in substance as follows:

That he had been county surveyor of Mississippi County in which the lands in suit are situate for a number of years and that he had made a careful examination of the area and had taken a series of levels or elevations across the lands in suit and adjoining surveyed lands, and that his examination was, in part, directed towards the determination whether Tyronza canal projected across the lands in suit tended in any way to relieve the land on flood waters during the wet season.

He testified:

Q. Now does the presence of that drainage canal in any way tend to relieve the land I have last referred to from water, if any water be present?

Q. We have got to say it may be a benefit in a way. It drains the water away a little quicker. Some times it drains the water there very quickly, but in heavy rains the water backs up over these lands.

Q. It tends to store the water there, you think.

Q. Yes, sir; that is, down near the mouth of that canal—the head waters of the low land up around Osceola and through that country that used to take weeks to get down in this country through its natural drainage, now it gets down there right now, and backs up here (indicating,) just the same as that other canal up there at Grassy Lake. This Tyronza canal has really damaged a great deal of land down at the mouth by water backing up.

16 Q. It floods back?

A. Yes, sir, instead of carrying the water into the ditch the water runs out over the land. That is the reason I say that the canal has not been much of a benefit to that land—it will not let the water out until after the water in the canal gets low enough.

As to the defendant's Exhibits 7, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26, requested by the praecipe for the appellant to be incorporated in the transcript of the record on appeal, each and every one thereof was objected to [be] plaintiff's counsel at the time said several exhibits were tendered by defendant in evidence upon the grounds among others, of immateriality and irrelevancy.

W. N. MILLS,  
J. A. TELLIER,  
*Solicitors for plaintiff.*

Approved:

JACOB TRIEBER, *Judge.*



*Præcipe of Appellee for Record on Appeal.*

The Clerk will please incorporate in the transcript on appeal, in addition to the matters called for by the præcipe filed by the Appellant, the following:

1. Motion to amend the answer.
3. Plaintiff's Exhibit "B".
4. Plaintiff's Exhibit "H".
5. Plaintiff's Exhibit "I".
6. Plaintiff's Exhibit "U".
7. Plaintiff's Exhibit "X".
8. Plaintiff's Exhibit "Z".
9. Plaintiff's Exhibit "AA".
10. Paragraph 13, "Page 1288 and 1289 of the Examiners transcript of record, consisting of an item in the agreement known as the "Arkansas Compromise."
11. Opinion of the Court.
- 17 12. Stipulation, dated June 19, 1914, agreeing that original report of Special Examiner, etc., be certified to Appellate Court.
13. Plaintiff's cost bill.

W. H. MARTIN,  
*United States Attorney, Solicitor for Appellee.*

*Stipulation.*

It is hereby stipulated by and between the parties hereto, by their respective counsel, that in addition to the printed record, and statement of the evidence, with such exhibits as might be included therein, the original report of the Special Examiner appointed to take proofs in said cause, consisting of a number of typewritten volumes of the evidence, together with the original exhibits referred to therein, including those described in the printed record, shall be certified to the Appellate Court to be used in this trial of said cause for any of the purposes contemplated under Equity Rule No. 76.

W. H. MARTIN,  
*U. S. Atty.,*  
W. N. MILLS,  
J. A. TELLIER,  
*For Plaintiff.*  
CHAS. T. COLEMAN,  
*For Defendant.*

It is so ordered.  
JACOB TRIEBER,  
*U. S. District Judge.*

Dated June 19, 1914.

Endorsed: Filed in the District Court June 23, 1914.

*Bill of Complaint.*

In the Circuit Court of the United States for the Eastern District of  
Arkansas.

No. —

In Equity

UNITED STATES OF AMERICA, Plaintiff,  
vs.

LEE WILSON & COMPANY, a Corporation; E. RITTER, H. BLUTHENTHAL, and M. HEILBONNER, Defendants.

To the Judges of the Circuit Court of the United States for the  
Eighth Circuit, Sitting within and for the Eastern District of  
Arkansas:

18 The United States of America by the Attorney-General  
brings this bill of complaint against Lee Wilson & Company,  
a corporation, E. Ritter, H. Bluthenthal and M. Heilbonner, and  
thereupon complains and shows unto your Honors:

I.

That defendant Lee Wilson & Company is a corporation organized and existing under and by virtue of the laws of the State of Arkansas and a citizen of said state and a resident of the eastern district thereof.

That defendant E. Ritter is a citizen of the State of Arkansas and a resident of the eastern district thereof. The defendants H. Bluthenthal and M. Heilbonner are citizens of the State of Tennessee and residents of the western district thereof. The names of these defendant- are unknown to the plaintiff.

II.

By the terms of a treaty executed on or about April 30, 1803, by and between the Republic of France and the United States of America, France ceded to the plaintiff, the Territory of Louisiana which, among other lands, embraced what is now known and described as Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, the southeast quarter of the northwest quarter (S. E.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$ ); the southwest quarter of the northeast quarter (S. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ); the west half of the southeast quarter ( $\frac{1}{2}$  S. E.  $\frac{1}{4}$ ) and the east half of the southwest quarter (E  $\frac{1}{2}$  S. W.  $\frac{1}{4}$ ), Section twenty-two (22); lots 1, 2, 3, 4, 5, and 6, the northwest quarter of the northeast quarter (N. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ), the northeast quarter of the northwest quarter (N. E.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$ ) and the south half of the northeast quarter (S.  $\frac{1}{2}$  N. E.  $\frac{1}{4}$ ) of Section twenty-seven (27); and that fractional part of the west half of the northwest quarter (W.  $\frac{1}{2}$  N. E.  $\frac{1}{4}$ ) of Section twenty six (26),

included within the survey approved April 28, 1910, all in Township Twelve (12) North, Range Nine (9) East of the 5th Principal Meridian, and within the County of Mississippi, State of Arkansas, and eastern district thereof, containing 853 acres and sixty-one-hundredths ( $60/100$ ) of an acre, according to the plat of said official survey of said lands approved April 28, 1910, of which said described lands the plaintiff is now in possession and at all times mentioned herein, was and now is the owner in fee simple, as a part of its public domain. Plaintiff shows that prior to the year 1910, the said described lands and the whole thereof had never been surveyed by the plaintiff and were wild, open, unoccupied and unappropriated lands, free from any physical sign of claim, dominion or ownership by the defendants herein or any of them or anyone claiming under them, or any of them; that subsequent to the said 28th day of April and during the year 1910, the said described lands and the whole thereof were by the plaintiff held subject to entry and were severally in the quantities as, and in the manner required by law, entered as homesteads in conformity with the rules and regulations of the plaintiff's General Land Office touching the procedure applicable thereto, by various qualified persons who ever since have been, and are now, in the possession of said lands and the whole thereof, claiming at all times since the initiation of their said entries under and in privity with, but not adversely to the paramount rights of the plaintiff.

### III.

By act of the legislature of the State of Arkansas which became law on the 15th day of February, 1893, as amended by an act approved March 21, 1893, the lands constituting that portion of the St. Francis Basin lying and being within the State of Arkansas, including the lands hereinbefore described, were designated as, and became a political subdivision of the State known as the St. Francis Levee District, and for the purpose of carrying out the policy of the said State touching the building, repairing, maintenance [anf] protection of a levee along what is known as the St. Francis front of said district, the said act as amended provided a body politic and corporate with perpetual succession, by the name and style of the Board of Directors St. Francis Levee District, granting the said Board plenary power not inconsistent with its charter and the laws of said State to carry into effect the objects of its incorporation and in the conduct of the business of said corporation to do all other acts and things proper to carry into effect the purposes and objects of said act as amended, not inconsistent with the laws of the said State of Arkansas. The said act as amended is hereby made a part of this bill, by reference.

### IV.

No attempt has ever been made by the State of Arkansas to assess the lands hereinbefore described until about the year 1882 when the said State began to assess the said lands for taxes. The taxes so

assessed were not nor were any of them paid by the plaintiff and the State has from time to time attempted to sell all of said lands for the delinquent taxes so assessed, and in pursuance of said tax sales has issued from time to time thereon tax deeds, respectively purporting to convey the title thereto. The defendant Lee Wilson & Company

claims title to all of the lands mentioned and described in Paragraph II hereof, under and by virtue of certain of said tax sales and tax deeds, made, executed and delivered by the county clerk of Mississippi County in some instances; under and by virtue of decrees of the Chancery Court of Mississippi County attempting to confirm in the Board of Directors St. Francis Levee District, title to said described lands; under and by virtue of attempted conveyances to the said defendant Lee Wilson & Company made by certain other grantors including the said St. Francis Levee District, more fully set forth in Paragraph V hereof.

## V.

The defendant Lee Wilson & Company claims to derive title to the lands embraced and described in Paragraph II hereof as follows:

Under date of September 12, 1859, the State of Arkansas issued to W. B. Waldron its patent purporting to convey Section 22, Township 12 North, Range 9 East, which said patent was recorded in the State Land Office at Little Rock, Arkansas, on the — day of —, 18—. Under date of June 11, 1873, the said W. B. Waldron and wife made, executed, acknowledged and delivered to the Memphis & St. Louis Railroad Company, a deed embracing said Section 22, which said deed was recorded on July 11, 1873, in Deed Record 5, at page 136; under date of March 27, 1885, the County Clerk of Mississippi County made, executed and delivered to the State of Arkansas in pursuance of an overdue tax decree pronounced on the 23rd day of February, 1883, a deed embracing said Section 22, which said deed was recorded in Deed Record 15 at page 36. The said sale to the State of Arkansas was duly confirmed on July 22, 1884, as appears by Chancery Record 2, page 256; under date of December 12, 1894, the Chancery Court of Mississippi County rendered its decree attempting to confirm the title to said Section 22 as well as the north half of the north half (N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ ) Sec. 26, Township 12 North, Range 9 East, 5th Principal Meridian and all of Fractional Sec. 27, in the St. Francis Levee District; under date of June 6, 1898, the St. Francis Levee District made, executed and delivered to one William Hunter, a deed to said Section 22 as well as all of fractional Section 27, which said deed was recorded June 28, 1898, in Deed Record 21, page 568; under date of October 20, 1899, the said William Hunter and wife made, executed and delivered to James L. Hale, a deed to said Section 22 as well as all of fractional Section 27, which said deed was recorded October 24, 1899, in Deed Record 23, page 612; under date of October 21, 1899, the said James L. Hale and wife made, executed and delivered to J. W. Quinn, a deed attempting to convey one-half interest in said Section 22 as well as a like interest in all of fractional Section 27, which said deed was re-

corded October 28, 1899, in Deed Record 23, page 639. This deed attempts to convey an undivided one-half interest. Under date of August 28, 1900, the same James L. Hale and wife made, executed and delivered to W. L. Crenshaw and T. M. Cathey, a deed conveying an undivided two-thirds of an [individual] one-half interest in and to said Section 22 as well as a like interest in all of fractional Section 27, which said deed was recorded September 12, 1900, in Deed Record 25, page 418; under date of November 24, 1900, the said Hale and wife, Crenshaw and wife, Quinn and wife, and Cathey and wife, executed and delivered to R. E. Lee Wilson and S. A. Beall, a deed attempting to convey said Section 22 as well as all of fractional Section 27, which said deed was recorded November 26, 1900, in Deed Record 25, page 565; under date September 23, 1902, the said S. A. Beall made, executed and delivered to the said R. E. Lee Wilson, a deed attempting to convey the said Section 22, as well as the north half of the north half (N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ ) Section 26, the south half of the northwest quarter (S.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$ ) Section 26, and all of fractional Section 27, which said deed was recorded September 24, 1902, in Deed Record 28, page 201; under date of July 25, 1903, the said R. E. Lee Wilson and wife made, executed and delivered to one John Mulroy a deed to said Section 22 as well as all of fractional Section 27, which said deed was recorded September 30, 1903, in Deed Record 27, page 457; under date February 2, 1910, the said John Mulroy made, executed and delivered to the defendant Lee Wilson & Company a deed to said Section 22 as well as all of fractional Section 27, which said deed was recorded February 4, 1910, in Deed Record 34, page 607 (600?); under date of April 10, 1905, the said R. E. Lee Wilson and wife made, executed and delivered to the defendant Lee Wilson & Company, a deed to said Section 22 as well as the north half of the north half (N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ ) of Section 26, the south half of the northwest quarter (S.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$ ) Section 26, and all of fractional Section 27, which said deed was recorded April 14, 1905, in Deed Record 30, page 524; under date of January 7, 1910, the said Hale and wife, Cathey and wife, Crenshaw and wife, and Quinn and wife made, executed and delivered to the defendant Lee Wilson & Company a deed to said Section 22 as well as to all of fractional Section 27, which said deed was recorded January 30, 1910, in Deed Record 34, page 603.

Under date of February 14, 1859, the State of Arkansas issued its patent to W. B. Waldron, purporting to convey the north  
22 half of the north half (N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ ), Section 26, Township 12 North, Range 9 East, 5th Principal Meridian, which said patent was recorded in the State Land Office at Little Rock, Arkansas, February 14, 1859; under date of June 7, 1859, the said W. B. Waldron and wife made, executed and delivered to one Robert L. White a deed to said north half of the north half (N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ ), Section 26, as well as the south half of the northwest quarter (S.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$ ), Section 26, which said deed was recorded June 24, 1869, in Deed Record 2, page 272; under date of April 24, 1886, the county clerk of Mississippi County by tax deed attempted to convey to the State of Arkansas said north half of the north half

(N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ ), Section 26, as well as all of fractional Section 27, which said deed was recorded April 24, 1886 in Deed Record 14, page 90. This deed was based on a tax sale held April 14, 1884. Under date of June 3, 1898, the St. Francis Levee District made, executed and delivered to the said R. E. Lee Wilson and S. A. Beall a deed attempting to convey said north half of the north half (N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ ) Section 26, as well as the south half of the northwest quarter (S.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$ ) Section 26, which said deed was recorded July 6, 1898, in Deed Record 21, page 589; under date of July 25, 1903, the said R. E. Lee Wilson made, executed and delivered to S. C. Portis a deed attempting to convey said north half of the north half (N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ ) Section 26, as well as the south half of the northwest quarter (S.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$ ) Section 26, which said deed was recorded September 30, 1903, in Deed Record 27, page 459; under date of October 15, 1903, the Chancery Court of Mississippi County attempted by its decree to confirm the title to the north half of the north half (N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ ) Section 26, as well as the south half of the northwest quarter (S.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$ ) Section 26, in S. C. Portis, as appears by Chancery Record 5, page 181, and Deed Record 30, page 155; under date of February 1, 1900, the said S. C. Portis and wife made, executed and delivered to the defendant Lee Wilson & Company a deed attempting to convey the north half of the north half (N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ ) of Section 26, as well as the south half of the northwest quarter (S.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$ ) Section 26, which said deed was recorded on the same day in Deed Record 34, page 613.

Under date of February 14, 1859, the State of Arkansas issued its patent to W. B. Waldron, purporting to convey the south half of the northwest quarter (S.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$ ), Section 26, Township 12 North, Range 9 East, which said patent was recorded in the State Land Office at Little Rock, Arkansas, February 14, 1859; under date of April 13, 1885, the County Clerk of Mississippi County made, executed and delivered to the State of Arkansas a tax deed for the south half of the Northwest quarter (S.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$ ) Section 26, which said deed was based on a tax sale of said lands made April 12, 1886, for the taxes of 1885, and which said deed was recorded in Deed Record 15, page 24, on April 16, 1888; under date of May 21, 1896, the State of Arkansas made, executed and delivered to the St. Francis Levee District a quitclaim deed embracing the south half of the northwest quarter (S.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$ ) Section 26, which deed was recorded June 20, 1896, in Deed Record 19, page 226;

Under date of February 16, 1859, the State of Arkansas issued its patent to W. B. Waldron, purporting to convey all of fractional Section 27, which said patent was recorded in the State Land office at Little Rock, Arkansas, February 16, 1859; under date of April 20, 1883, the commissioner of Mississippi County attempted to make sale of all of said fractional Section 27, to the State of Arkansas, under an overdue tax decree, which sale was duly confirmed on July 22, 1884, as appears in Chancery Record 2, page 256.

## VI.

That defendants E. Ritter, H. Bluthenthal and M. Heilbonner also claim title to the lands described in Paragraph II hereof under a certain quitclaim deed purporting to convey the said lands, made, executed and delivered to them by the said St. Francis Levee District, bearing date of April 4, 1906, and describing said lands as all of the unsurveyed lands in Section 22, 26 and 27, Township 12 North, Range 9 East, between the meander line of the official government survey, which said deed is recorded in Deed Record 33, at page 117.

## VII.

The St. Francis Levee District did not at the time it made the quitclaim deed as alleged in Paragraph VI hereof, nor at any other time, have any right or title to or interest in the lands which it attempted to convey as alleged in paragraph VI hereof, and the deed so made by it as so alleged is wholly null and void and constitutes a cloud upon the title of the plaintiff to the lands [attempted] to be conveyed by the said deed.

## VIII.

Plaintiff shows unto the court that the said defendants have not nor has either of them any basis of claim to the title to the lands described in Paragraph II hereof other than through the conveyance, decrees, tax sales, tax proceedings and deeds hereinbefore mentioned and described. The plaintiff avers that all the assessments, tax sales, tax deeds, tax proceedings and decrees based thereon as hereinbefore set forth in Paragraph V hereof wherein any of the lands described in Paragraph II hereof have been assessed, sold or deeded for taxes, and the title thereto confirmed by said decrees, are wholly null and void; that all of the above mentioned conveyances and deeds wherein they purport to convey any part of the lands described in Paragraph II hereof are utterly null and void; that said decrees of the Chancery Court of Mississippi County wherein they purport to confirm in various parties the title to the lands described in Paragraph II hereof were made and rendered illegally and without authority in the court to pronounce them and are utterly null and void; that all of said assessments, tax sales, tax deeds, tax proceedings, conveyances, deeds and decrees attempting to grant and confirm title to said described lands constitute clouds upon the title of the plaintiff thereto and seriously impair the market value thereof to the great detriment and injury of the plaintiff and those persons in privity with and claiming under the plaintiff by reason of the homestead entries aforesaid.

Plaintiff avers that none of the grantors named in the deeds and conveyances described in Paragraph V in so far as the said deeds and conveyances purport to convey the title to the lands described in Paragraph II hereof, or any part thereof, at the time



they made the deeds and conveyances as alleged nor at any other time had or now have any right, title to or interest in the said described lands, and the deeds and conveyances so made by them as so alleged and each thereof are wholly null and void and constitute clouds upon the title of the plaintiff to the lands attempted to be conveyed by said deeds.

### IX.

That said defendants and each of them, assert and threaten to assert some right, title or interest in and to the lands described in Paragraph II hereof or some portion thereof, which said rights, claims, titles and interests are and each of them [in] hostile and adverse to the plaintiff.

### X.

That said defendants and each of them directly or by their agents are now threatening and have in the past repeatedly threatened, harassed, intimidated and attempted to drive the homestead entrymen, hereinbefore mentioned, away from the lands described in Paragraph II hereof, regularly entered by them as homesteads and have by threats, intimidation and oppression attempted in divers ways to prevent the said homestead entrymen from making compliance with the provisions of plaintiff's homestead laws and the rules and regulation of plaintiff's General Land office in respect of cultivation, improvements and residence upon said described lands, and otherwise have interfered with their full, free and complete compliance with the federal statutes relating to the entry, sale and disposition of said lands; and plaintiff avers that the said defendants have threatened, and do now threaten, to cut and remove the standing timber thereon and otherwise commit waste upon the lands so entered as aforesaid and will, unless restrained by the injunction of this Honorable Court, denude the described lands of the valuable timber growing thereon to the irreparable injury of the plaintiff and the persons aforesaid claiming under it. The plaintiff leaves said defendants and each of them to disclose and set forth the nature and extent of said pretended rights, titles, claims and interests, but in that behalf states that the said defendants have not and neither of them has any valid, legal or equitable right, title, interest or claim whatsoever in or to the said described lands or any part thereof.

In consideration whereof, and forasmuch as the plaintiff is without full and adequate remedy at law and is only relievable in a court of equity and to the end that the said defendants may make full, true and direct answer to all and singular the matters and things hereinbefore set forth as fully as if they had been particularly interrogated thereunto, but not under oath, an answer under oath being hereby expressly waived; and to the end that all of the said tax assessments, decrees of confirmation in so far as they purport to affect the title to said lands; and the attempted sales and conveyances of the said lands may be declared void; cancelled and held for



naught; that all of the said conveyances in the possession of the said defendants or either or any of them, wherein they purport to convey title to said lands or any part thereof may be delivered up and surrendered by the said defendants under the court's command for cancellation; that the court before which the said proceedings to obtain confirmation of title to the said lands were had may be decreed to have acted illegally and without authority therein and the proceedings therein held for naught; that all of said tax assessments, sales, deeds, proceedings and conveyances be decreed and held to  
26 be clouds upon the title of the plaintiff to said described lands and as such be removed; that the defendants herein may be ordered, adjudged and decreed to execute and deliver to the plaintiff a good and sufficient deed or deeds conveying the said lands free and clear of all liens, incumbrances, outstanding claims or clouds whatsoever caused or created by the said defendants respectively, to the plaintiff in fee simple absolute, and in default thereof that the plaintiff may be entitled to record said decree, which when recorded shall operate as a deed conveying said lands to the plaintiff; that the defendants herein and each of them may be forever enjoined from asserting any right, title or interest in or to the said described lands or any part thereof or from creating any cloud upon the title thereto by reason of the said tax assessments, tax sales, decrees, deeds, sales, proceedings and conveyances and from making or asserting any claim or title under or on account thereof; that the said lands and the whole thereof be decreed to be the perfect property of the plaintiff in fee simple absolute and that the title thereto be forever quieted and confirmed in the plaintiff particularly against any claims of right, title or interest in, to or upon the same or any part thereof, by or on behalf of the said defendants herein or any of them or any person claiming or to claim under them or either of any of them; that during the progress of this cause the defendants and each of them be enjoined from attempting to sell, convey, mortgage or otherwise incumber the said lands or any part thereof or from in any manner creating any cloud upon the title thereto, and that the said defendants and each of them may by the order of this court be enjoined from cutting or removing the standing timber thereof or from otherwise committing waste thereon, and that the defendants and each of them may by decree of this Honorable Court be enjoined from in any manner interfering directly or indirectly with the peaceable possession and enjoyment of the said described lands by the said persons claiming by under and through the plaintiff under the homestead law; and from in any manner interfering with their free, full and complete compliance with the federal statutes relating to and the rules and regulations of plaintiff's General Land Office touching the procedure applicable to the entry, sale and disposition of said lands to qualified homesteaders; and that the plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and of good conscience;

27 May it please your honors to grant unto the plaintiff a writ of subpoena of the United States of America issued by and under the seal of this Honorable Court directed to the said Lee Wilson & Company and the said E. Ritter, H. Bluthen-

thal and M. Heilbonner, thereby commanding them and each of them at a time certain and under a certain penalty therein to be named to appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises; and to stand to, perform and abide by such order, direction and decree that may be made against them or either of them in the premises as shall seem meet and agreeable to equity.

GEORGE W. WICKERSHAM,  
*Attorney-General of the United States.*

WM. G. WHIPPLE,

*United States Attorney, Eastern District of Arkansas.*

WILLIS N. MILLS,

*Special Assistant to the Attorney-General, Of Counsel.*

Endorsed: Filed in the Circuit Court on Aug. 4, 1911.

Copy of within Bill mailed Chas. T. Coleman, Esq., Little Rock, this August 8th, 1911.

EMERSON R. CRUM, *Clerk.*  
By J. B. CONNOLLY, *D. C.*

Copy of within Bill mailed to Messrs. Norton & Hughes, Forrest City, Arkansas, this the 30th day of August, A. D. 1911.

EMERSON R. CRUM, *Clerk,*  
By J. B. CONNOLLY, *D. C.*

Record Entry on Filing Answer of Defendant.

October 9, 1911.

On this day comes the defendant, Lee Wilson & Company, a corporation, by Messrs. Coleman & Lewis, its attorneys, and files its answer herein.

(Answer.)

The Answer of Lee Wilson & Company, One of the Defendants, to the Bill of Complaint of the United States of America, Complainant.

This defendant, now and at all times hereafter saving to itself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material or necessary for it to make answer to, answering says:

# I.

The defendant admits that it is a corporation organized and existing under and by virtue of the laws of the State of Arkansas, and that it is a citizen of said state, and a resident of the eastern district thereof.

## II.

It admits that the United States acquired title to all of the land in controversy in this cause from the Republic of France, under and by virtue of a treaty entered into on or about April 30, 1803, by and between the Republic of France and the United States of America, and that the title to all of said land remained in the United States until the year 1850; but it denies that the plaintiff is now in possession of said land or of any part thereof, and denies that the plaintiff is now the owner of said land or of any part thereof, or that any of said land is a part of its public domain.

## III.

It denies that prior to the year 1910 the said land had never been surveyed by plaintiff, and was wild, open, unoccupied and unappropriated land free from any physical signs of claim, dominion or ownership by this defendant; it denies that during the year 1910 and subsequent to the 28th day of April of said year said land was held subject to entry by the plaintiff, or that it was entered as homesteads by various persons, or that it is now in the possession of various persons claiming under homestead entries.

## IV.

It admits the creation and organization of the St. Francis Levee District under and by virtue of the acts of the general assembly of the State of Arkansas of February 15, 1893, and March 21, 1893, for the purpose and with the powers alleged in the bill.

## V.

It denies that no attempt was ever made by the State of Arkansas to tax the said land until the year 1882. It admits that none of the taxes assessed by the state were paid by the plaintiff, and it admits that the land was sold for delinquent taxes at various times under the general laws of the state, and that tax deeds were issued by the state to the purchasers at the tax sales. It admits that the defendant claims title to said land under and by  
29      virtue of certain tax sales and tax deeds, and under and by  
virtue of decrees of the chancery court of Mississippi County confirming title in the board of directors in the St. Francis Levee District, and under and by virtue of certain conveyances from other grantors including the St. Francis Levee District, as alleged in the bill.

## VI.

It admits that it [*darraigns*] title to the land described in the bill under and by virtue of the various deeds, conveyances and decrees specifically set forth in paragraph V of the bill, and it admits the execution and delivery of each and every one of the deeds and conveyances and the rendition of each and every one of the judgments and decrees, as specifically enumerated and set forth in said paragraph V of the bill.

## VII.

It admits that at the date of the execution of the alleged quit claim deed from the St. Francis Levee District to the defendants, E. Ritter, H. Bluthenthal and M. Heilbonner, the St. Francis Levee District did not have any right or title to or interest in the land which it attempted to convey by said deed, and it alleges that at the date of said deed, April 4, 1906, the legal and equitable title to said land was in this defendant.

## VIII.

It denies that it has no claim of title to said land other than through the conveyances, decrees, tax proceedings, sales and deeds mentioned in the bill. It denies that any of the tax assessments, tax sales, tax deeds, tax proceedings and decrees based thereon by which the said land was assessed, sold or decreed for taxes and the title thereto confirmed by said decrees is null and void; it denies that any of the conveyances or deeds which are described in the bill and which purport to convey title to said land to this defendant is null and void; it denies that any of the decrees of the chancery court of Mississippi County which purport to confirm in various parties the title to said land was rendered illegally and without authority in the court to pronounce them or is null and void; and it denies that any of the assessments, tax sales, tax deeds, tax proceedings, conveyances, deeds or decrees attempting to grant and confirm title to said land constitutes a cloud upon the plaintiff's title or upon the title of anyone claiming under or in privity with the complainant.

## IX.

It denies that any of the grantors named in the deed and conveyances described in paragraph V of the bill had no title  
30 to or interest in said land at the date of said deeds and conveyances, and it denies that said deeds and conveyances or any of them are null and void, or that they or any of them constituted a cloud upon the plaintiff's title to said land.

## X.

It admits that it claims, asserts and threatens to assert all right and title to and interest in the land described in the bill, and that its rights, claims, title and interest are hostile and adverse to plaintiff.

## XII.

It admits that it has used and is now using the said land as its own, claiming title thereto, and that it has endeavored and is now endeavoring by process of law to exclude squatters who claim to be homesteaders from the possession of said land; but it denies that it has or is now using any threats, intimidation or oppression against any of the squatters who claim to be homesteaders, or that it has used any unlawful means for the purpose of keeping said persons

or any of them out of possession, and to prevent them from committing trespasses upon or depredations on the land described in the bill.

## XII.

This defendant avers and respectfully shows unto the court that the land described in the bill was surveyed by the plaintiff as a part of its public domain in 1841, and that in making said survey, the township lines of township 12 north, range 9 east, were actually run, surveyed, located, established and marked on the ground as provided by law, and that true, accurate and proper maps, plats and filed notes of said survey were returned to and filed in the general land office of the plaintiff at Washington by the surveyor general and were duly accepted and approved as provided by law. A certified copy of the plat of the survey of said township is attached hereto as part hereof, marked "Exhibit A." A certified copy of said field notes of the survey of said township is attached hereto as part hereof marked "Exhibit B."

## XIII.

In the governmental survey of said township in 1841 the lines of the sections and of the subdivisions of sections were actually run, located, established and marked on the ground as required by law and by the rules and regulations promulgated by the land department of the plaintiff. At the date of said survey there existed in said township a small inland non-navigable lake, which was  
31 then known and had been locally known from time immemorial as Moon lake, which lake was meandered in the survey as provided by law and in accordance with the rules and regulations promulgated by the land department of the plaintiff. The meander lines of said lake were shown on the official plats of said survey, returned to the general land office, and the lake was designated on the maps and plats of said survey as Moon Lake.

## XIV.

The defendant alleges that by act of Congress approved September 28, 1850, the complainant granted to the State of Arkansas all of the swamp and overflowed lands, rendered thereby unfit for cultivation, within the territory of said state. The act provided that the Secretary of the interior should make out an accurate list and plats of the lands embraced in the grant and transmit the same to the governor of the State of Arkansas; and that, at the request of the governor, a patent should be issued by the complainant conveying the said lands to the State of Arkansas in fee simple. All of the land embraced in said township 12 north, range 9 east, was swamp and overflowed land, and was so certified by the secretary of the interior to the governor of the State of Arkansas as provided in said act. On the 22nd of September, 1852, the governor of the state selected the whole of said township 12, and requested a patent from the plaintiff to the state for said land, the said selection being

included in list 5-A, page 50. A certified copy of said selection is attached hereto as part hereof, marked "Exhibit C." On May 11, 1853, the said selection, in so far as said township 12 was concerned, with the exception of section 16 in said township was duly approved as provided by law. A certified copy of said approval is attached hereto as part hereof, marked "Exhibit C." In accordance with said approval the said township was on September 27, 1858, patented by the United States to the State of Arkansas. By the express terms of the patent, the whole of the township, with exception of section 16, was conveyed to the state. A certified copy of said patent is attached hereto as part hereof, marked "Exhibit D."

### XV.

The defendant [allages] that by the swamp land grant of September 28, 1850, the designation by the secretary of the interior of the said township 12 as swamp and overflowed land within the purview of said grant, the selection of said township by the governor of the state [abd] his request for a patent, the approval of said selection, and the patent from the United States to the State of Arkansas conveying said township with the exception of section 16 therein, the title to the whole of said township, including the land described in the bill in this cause, passed from the plaintiff to the State of Arkansas, and the plaintiff has had no right or title to or interest in said township or any part of the land embraced therein since the date of said patent.

### XVI.

The defendant alleges that the State of Arkansas, in owning and disposing of the lands embraced in said township 12 (including the land described in the bill of complaint herein) accepted and adopted the governmental survey made in 1841, and the maps, plats and field notes of said survey as returned to the office of the surveyor general, and subsequently described the said land and parts thereof in its conveyances in the terms of said governmental survey, with the intention and purpose that such descriptive terms should convey title to such lands as would be embraced within such terms if the said survey, and the plats and maps and field notes thereof, had been true, correct and accurate in every respect. Defendant further alleges that under and by virtue of the common law in force in Arkansas, the conveyance of a fractional section, bordering on a non-navigable inland lake would operate to convey title to the grantee to the center of the lake; and in disposing of the fractional sections bordering upon and constituting the [littoral] shore of Moon Lake in said township 12, the state and its several grantees intended that the portion of the bed of Moon lake as it appears on the plat of the governmental survey which lays between the shore line of the respective fractional sections and the center of the lake should pass to the grantees. The State of Arkansas has always recognized this effect of its various grants of said fractional sections, and

has treated the bed of said lake as belonging to the state's grantees, and therefore, subject to all of the public burdens of private ownership.

## XVII.

The defendant alleges that the title which the state acquired from the United States to the land described in the bill of complaint herein, which land formerly constituted the bed of Moon lake according to the official plat of the survey returned to the general land office, has passed by mesne conveyances from the state to this defendant. The chain of conveyances is as follows to-wit:

All of fractional section 22, in township 12 north, range 9 east.

33 First. State of Arkansas to W. B. Waldron, Patent dated September 12, 1859, and recorded in the state land office at Little Rock. A certified copy of said patent is attached hereto as part hereof, marked "Exhibit E."

Second. W. B. Waldron and wife to Memphis & St. Louis Railroad Company. Warranty deed executed June 11, 1873, and recorded July 11, 1875, in deed record 5, page 136. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit F."

Third. County clerk to State of Arkansas. Deed executed March 27, 1885, and recorded May 23, 1888, in deed record 15, page 36, under an overdue tax decree rendered on the 23rd of February, 1883, which sale to the state was duly confirmed on July 22, 1884, as appears in chancery record 2, page 256. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit G."

Fourth. State of Arkansas to St. Francis Levee District. Act of March 29, 1893.

Fifth. Decree of the chancery court of Mississippi County, rendered December 12, 1894, and recorded in chancery record 3, page 135, confirming the title to said land in the St. Francis Levee District. A certified copy of said decree is attached hereto as part hereof, marked "Exhibit H."

Sixth. Sir Francis Levee District to William Hunter. Warranty deed executed June 6, 1898, and recorded June 28, 1898, in deed record, 21, page 568. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit I."

Seventh. William Hunter and wife to James L. Hale. Warranty deed executed October 20, 1899, and recorded October 24, 1899, in deed record 23, page 612. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit J."

Eighth. James L. Hale and wife to J. W. Quinn. Deed executed October 21, 1899, and recorded October 28, 1899, in deed record 23, page 649. A certified copy of said deed, which conveyed an undivided one-half interest in said land, is attached hereto as part hereof, marked "Exhibit K."

Ninth. James L. Hale and wife to W. L. Crenshaw and T. M. Cathay. Deed executed August 28, 1900, and recorded September

12, 1900, in deed record 25, page 418. A certified copy of  
 34 said deed, which conveyed an undivided two-thirds of an undivided one-half interest in said land, is attached hereto as part hereof, marked "Exhibit L."

Tenth. James L. Hale, J. W. Quinn, W. L. Crenshaw and T. M. Cathay to R. E. Lee Wilson and S. A. Beall. Warranty deed executed November 24, 1900, and recorded November 26, 1900, in deed record 25, page 565. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit M."

Eleventh. S. A. Beall, single, to R. E. Lee Wilson. Warranty deed executed September 23, 1902, and recorded September 24, 1902, in deed record 28, page 201. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit N."

Twelfth. R. E. Lee Wilson and wife to John Mulroy. Deed executed July 25, 1903, and recorded September 30, 1903, in deed record 27, page 457. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit O."

Thirteenth. John Mulroy, single, to the defendant. Deed executed February 2, 1910, and recorded February 4, 1910, in deed record 34, page 607. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit P."

Fourteenth. R. E. Lee Wilson and wife to the defendant. Warranty deed executed April 10, 1905, and recorded April 14, 1905, in deed record 30, page 524. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit Q."

Fifteenth. James L. Hale and wife, T. M. Cathay and wife, W. L. Crenshaw and wife and J. W. Quinn and wife to the defendant. Deed executed [Janu-ry] 7, 1910, and recorded January 31, 1910, in deed record 34, page 603. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit R."

## B.

N.  $\frac{1}{2}$  of N.  $\frac{1}{2}$  of section 26, in township 12 north, range 9 east.

First. State of Arkansas to W. B. Waldron. Patent dated February 14, 1859, and recorded on the same day in the state land office at Little Rock. A certified copy of said patent is attached hereto as part hereof, marked "Exhibit S."

Second. W. B. Waldron and wife to Robert L. White. Warranty deed executed June 7, 1857, and recorded June 24, 1869, in deed record 2, page 272. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit T."

35 Third. County clerk to the State of Arkansas. Tax deed executed April 24, 1886, and recorded April 24, 1886, in deed record 14, page 90. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit U."

Fourth. State of Arkansas to St. Francis Levee District. Act of March 29, 1893.

Fifth. Decree of the chancery court of Mississippi County rendered December 12, 1894, and recorded in chancery record 3, page 135, confirming the title to said lands in the St. Francis Levee Dis-



trict. A certified copy of said decree has been previously attached hereto as part hereof, marked "Exhibit V."

Sixth. St. Francis Levee District to R. E. Lee Wilson and S. A. Beall. Deed executed June 3, 1893, and recorded July 6, 1898, in deed record 21, page 589. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit W."

Seventh. S. A. Beall, single, to R. E. Lee Wilson. Warranty deed executed September 23, 1902, and recorded September 24, 1902, in deed record 28, page 201. A certified copy of said deed has previously been attached hereto as part hereof, marked "Exhibit X."

Eighth. R. E. Lee Wilson to S. C. Portis. Deed executed July 25, 1903, and recorded September 30, 1903, in deed record 27, page 459. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit Y."

Ninth. Decree of the chancery court of Mississippi County rendered October 15, 1903, and recorded in chancery record 5, page 181, and in deed record 30, page 155, confirming the title to said land in S. C. Portis. A certified copy of said decree is attached hereto as part hereof, marked "Exhibit Z."

Tenth. S. C. Portis and wife to the defendant. Deed executed February 1, 1910, and recorded on the same day in deed record 34, page 613. A certified copy of said deed is hereto attached as part hereof, marked "Exhibit AA."

Eleventh. R. E. Lee Wilson and wife to the defendant. Deed executed April 10, 1905, and recorded April 14, 1905, in deed record 30, page 524. A certified copy of said deed has been previously attached hereto as part hereof, marked "Exhibit Q."

### C.

S.  $\frac{1}{2}$  of N. W.  $\frac{1}{4}$  of section 26, in township 12 north, range 9 east.

36 First. State of Arkansas to W. B. Waldron. Patent dated February 14, 1859, and recorded on the same day in the state land office at Little Rock. A certified copy of said patent is attached hereto as part hereof, marked "Exhibit BB."

Second. W. B. Waldron and wife to Robert L. White. Warranty deed executed June 7, 1859, and recorded June 21, 1869, in deed record 2, page 272. A certified copy of said deed has previously been attached hereto as part hereof, marked "Exhibit T."

Third. County clerk to State of Arkansas. Tax deed executed April 13, 1888, and recorded April 16, 1888, in deed record 15, page 24. The tax sale was held April 12, 1886, for the non-payment of taxes due in 1885. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit CC."

Fourth. State of Arkansas to St. Francis Levee District. Quitclaim deed executed May 21, 1896, and recorded June 20, 1896, in deed record 19, page 226. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit DD."

Fifth. St. Francis Levee District to R. E. Lee Wilson and S. A. Beall. Deed executed June 3, 1898, and recorded July 6, 1898, in

deed record 21, page 589. A certified copy of said deed has previously been attached hereto as part hereof, marked "Exhibit W."

Sixth. S. A. Beall, single, to R. E. Lee Wilson. Warranty deed executed September 23, 1902, and recorded September 24, 1902, in deed record 28, page 201. A certified copy of said deed has previously been attached hereto as part hereof, marked "Exhibit M."

Seventh. R. E. Lee Wilson to S. C. Portis. Deed executed July 25, 1903, and recorded September 30, 1903, in deed record 27, page 459. A certified copy of said deed has previously been attached hereto as part hereof, marked "Exhibit X."

Eighth. Decree of the chancery court of Mississippi County rendered October 15, 1903, and recorded in chancery record 5, page 181, and in deed record 30, page 155, confirming the title to said land in S. C. Portis. A certified copy of said decree has been previously attached hereto as part hereof, marked "Exhibit Y."

Ninth. S. C. Portis and wife to defendant. Deed executed February 1, 1910, and recorded February 7, 1910, in deed record 34, page 613. A certified copy of said deed has previously been attached hereto as part hereof, marked "Exhibit Z."

Tenth. R. E. Lee Wilson and wife to defendant. Deed executed April 10, 1905, and recorded April 14, 1905, in deed record 30, page 524. A certified copy of said deed has been previously attached hereto as part hereof, marked "Exhibit Q."

#### D.

All of fractional section 27, in township 12 north, range 9 east.

First. State of Arkansas to W. B. Waldron. Patent dated February 16, 1859, and recorded in the state land office on the same day. A certified copy of said patent is attached hereto as part hereof, marked "Exhibit EE."

Second. Commission to the State of Arkansas. Sale April 20, 1883, under an overdue tax decree, which sale was duly confirmed on July 22, 1884, as appears in chancery record 2, page 256. A certified copy of said deed is attached hereto as part hereof, marked "Exhibit FF."

Third. County clerk to State of Arkansas. Tax deed dated April 24, 1886, and recorded on the same day in deed record 14, page 90, the tax sale having been made on April 14, 1884. A certified copy of said tax deed has been previously attached hereto as part hereof, marked "Exhibit U."

Fourth. State of Arkansas to the St. Francis Levee District. Act of March 29, 1893.

Fifth. Decree of the chancery court of Mississippi County rendered December 12, 1894, and recorded in chancery record 3, page 135, confirming the title to said land in the St. Francis Levee District. A certified copy of said decree has been previously attached hereto as part hereof, marked "Exhibit H."

Sixth. St. Francis Levee District to William Hunter. Warranty deed executed June 6, 1898, and recorded June 28, 1898, in deed

record 21, Page 568. A certified copy of said deed has been previously attached hereto as part hereof, marked "Exhibit I."

Seventh. William Hunter and wife to James L. Hale. Warranty deed executed October 20, 1899, and recorded October 24, 1899, in deed record 23, page 612. A certified copy of said deed has been previously attached hereto as part hereof, marked "Exhibit J."

38 Eighth. James L. Hale and wife to J. W. Quinn. Deed executed October 21, 1899, and recorded October 28, 1899, in deed record 23, page 639. A certified copy of said deed, which [conveyes] an undivided one-half interest in said lands, has been previously attached hereto as part hereof, marked "Exhibit K."

Ninth. James L. Hale and wife to W. L. Crenshaw and T. M. Cathay: Warranty deed executed August 28th, 1900, and recorded September 12, 1900, in deed record 25, page 418. A certified copy of said deed, which conveys an undivided two-thirds of an undivided one-half interest in said lands, has been [previoudly] attached hereto as part hereof, marked "Exhibit L."

Tenth. J. W. Quinn, James L. Hale, T. M. Cathay and W. L. Crenshaw to R. E. Lee Wilson and S. A. Beall. Warranty deed executed November 24th, 1900, and recorded November 26, 1900, in deed record 24, page 565. A certified copy of said deed has been previously attached hereto as part hereof, marked "Exhibit M."

Eleventh. S. A. Beall, single, to R. E. Lee Wilson. Warranty deed executed September 23, 1902, and recorded September 24, 1902, in deed record 28, page 201. A certified copy of said deed has been previously attached hereto as part hereof, marked "Exhibit N."

Twelfth. R. E. Lee Wilson and wife to John Mulroy. Deed executed July 25, 1903, and recorded September [30m] 1903, in deed record 27, page 457. A certified copy of said deed has been previously attached hereto as part hereof, marked "Exhibit O."

Thirteenth. John Mulroy, single, to the defendant. Deed executed January 25, 1910, and recorded January 26, 1910, in deed record 34, page 600. A certified copy of said deed has been [previoudly] attached hereto as part hereof, marked "Exhibit P."

Fourteenth. R. E. Lee Wilson and wife to defendant. Deed executed April 10, 1905, and recorded April 14, 1905, in deed record 30, page 524. A certified copy of said deed has been previously attached hereto as part hereof, marked "Exhibit Q."

Fifteenth. James L. Hale and wife, T. M. Cathay and wife, W. L. Crenshaw and wife and J. W. Quinn and wife to the defendant. Deed executed January 7th, 1910, and recorded January 31, 1910, in deed record 34, page 603. A certified copy of said deed

39 has been previously attached hereto as part hereof, marked "Exhibit R."

## XVIII.

The defendant alleges that if the state's title to the land described in the bill of complaint did not pass to the defendant under the mesne conveyances referred to in the bill and specifically set forth in this answer, the state's title to said land passed to and vested in the St. Francis Levee District under the grant from the state to the

Levee District by the act of the general assembly of the State of Arkansas, approved March 21, 1893, and the title to said land subsequently passed from the St. Francis Levee District to this defendant under the mesne conveyances from it to the defendant referred to in the bill herein and specifically set forth in this answer.

### XIX.

The defendant alleges that under the patent of the United States to the State of Arkansas, the state claimed to be the owner of all of section 22, all of section 27 and all of section 26, in township 12 north, range 9 east, which included all of the land described in the bill of complaint herein. Since the date of the state's patent conveying said sections and parts of said sections, the state, through its regularly constituted authorities, has always held that all of said sections, containing 640 acres each, were subject to taxation, and it has regularly assessed and collected state and county taxes on each of said sections as containing said number of acres. The defendant and those under whom it claims has paid taxes on said sections, on the basis that each contained 640 acres, for the years 1900-1910, inclusive. Copies of the tax receipts for said years are attached hereto as part hereof, marked "Exhibit GG."

### XX.

The purpose of the swamp land grant of September 28, 1850, as set forth in the act, was "to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein." The defendant alleges that in the execution of the trust devolving upon it, the State of Arkansas has provided for the construction of levees to reclaim the lands in the St. Francis basin, in which the land described in the bill is situated, which levees have greatly aided in the reclamation of said land, and the defendant and those under whom it claims have been required to pay and have paid large sums of money for the construction and maintenance of said levees and the reclamation of said land, which sums of money have been levied and collected from the defendant by the St. Francis Levee District on account of the defendant's ownership of the land described in the bill. The said sections 22, 27 and 26, which include the land described in the complaint herein, have been assessed for levee taxes on the basis that each of said sections contained 640 acres, and the defendant and those under whom it claims have paid levee taxes on said land for the years 1901 to 1910, both inclusive. The defendant files receipts for said levee taxes for said years as part hereof, marked "Exhibit HH."

### XXI.

The defendant further alleges that under acts passed by the general assembly of the State of Arkansas a special drainage district has been organized for the purpose of draining the land which

formerly constituted the bed of Moon Lake, being the land described in the bill herein, as well as other contiguous lands, and a drainage canal has been constructed through the center of said lake, the effect of which has been to drain and reclaim said land; and by virtue of the defendant's ownership of the land described in the bill, it has been required to pay, and has paid large sums of money for said drainage assessments, which payments have resulted in the reclamation of said land, and have increased its market value more than twenty fold. The defendant says that said canal was constructed and said payments paid long before the plaintiff asserted any claim to said land.

## XXII.

Defendant alleges that the plaintiff is barred by the five years' statute of limitations, under the act of Congress of March 3, 1891, c. 561, Section 8, 26 Stat. 1099; and the defendant hereby specially pleads the said statute of limitations in bar of this action.

Wherefore, this defendant, having fully answered, confessed, *transversed* and avoided or denied all the matters in the said bill of complaint material to be answered, according to its best knowledge and *behalf*, humbly prays this honorable court to enter its decree that this defendant be hence dismissed with its reasonable costs and

charges in this behalf most wrongfully sustained; and for such other and further relief in the premises as equity may require and to this honorable court may seem meet and proper.

COLEMAN & LEWIS,

*Solicitors for Lee Wilson & Company.*

Endorsed: Filed in the District Court October 9, 1911.

*Motion to Amend (Letter from U. S. Attorney Showing That No Motion to Amend the Answer Was Filed).*

Department of Justice.

Office of United States Attorney, Eastern District of Arkansas.

LITTLE ROCK, July 1, 1914.

Mr. J. B. Connolly, Deputy United States Clerk, Helena, Arkansas.

DEAR SIR: Answering yours of June 29, 1914, in re United States vs. Lee Wilson, et al., I beg to advise that no motion to amend the answer was filed in the case. If it is referred to in the praecipe it is surplusage, and your record will be complete without it.

Yours truly,  
(Signed)

W. H. MARTIN,  
*United States Attorney.*

Endorsed: Filed in the District Court on July 2, 1914.

*Amendment to Answer.*

For amendment to its answer to the bill of complaint herein, the defendant respectfully shows unto the court, as follows:

## XXIII.

The defendant alleges that under the facts of this case, as set forth in this amendment, the plaintiff is and ought to be estopped from maintaining the present action against this defendant.

By the express terms of the act of Congress of September 28, 1850, the United States granted to the State of Arkansas the whole of the swamp and overflowed lands within its borders, and the Secretary of the Interior was charged with the duty of identifying and  
42 listing such lands, and of issuing patents therefor to the State of Arkansas. On November 21, 1850, the Secretary of the Interior submitted to the Governor of the State of Arkansas a plan which involved alternative methods of selection. The first was to adopt the field notes of the government survey as conclusive of the character of the lands; the second was to disregard the field notes entirely and to make a selection based on and an actual inspection of the lands by agents to be appointed by the state.

By Act of December —, 1850, the State of Arkansas refused to accept the field notes of the government survey as evidence of the character of the lands, and appointed swamp land commissioners whose duty it was to make an actual inspection of the lands and to prepare lists of all the swamp and overflowed lands lying in the state.

These lists were to be delivered to the governor, and by him to be forwarded to the secretary of the Interior, as the state's selection of the lands contained therein.

In the plan submitted by the secretary of the Interior, the governor of the state was authorized to select whole townships instead of sections and subdivisions of sections therein, if an inspection showed that all the lands in the township were swamp and overflowed. The commissioners of the state inspected township 12 north, range 9 east, and found that all the lands in the township, including the lands in controversy, were swamp and overflowed. Prior to September 22, 1852, the governor of the state forwarded to the proper officer at Washington a list of selections made by the state, which list was marked "A." In this list the state selected township 12 north, range 9 east, as a whole township, intending thereby to select the entire area within the interior boundary lines of said township. This list was approved by the secretary of the Interior on May 11, 1853. The selection was not made "according to the official plats of the survey of the said lands returned to the general land office by the surveyor general," but, on the contrary, was based on an actual inspection of the lands, and made without reference to the official plats of the government survey. The secretary of the Interior interpreted the selection as including all the land in the township,

the unsurveyed as well as the surveyed, and as specifically including the lands in controversy. Upon approving the list, he directed that an entry be made in the government track book at Washington, and also in the tract book in the United States Land Office at Little Rock showing that the land in controversy had been selected by the state under the swamp land grant, and that such selection had been approved by the secretary of the Interior. The entry was made as follows:

Whole of section 22, township 12 north, range 9 east. Selected as swamp under act of September 28, 1850. Approved May 11, 1853."

"Whole of section 26, township 12 north, range 9 east. Selected as swamp under act of September 28, 1850. Approved May 11, 1853."

"Whole of section 27, township 12 north, range 9 east. Selected as swamp under act of September 28, 1850. Approved May 11, 1853."

The defendant alleges that on the 3rd of March, 1857, all the land in sections 22, 26 and 27, township 12 north, range 9 east, had been selected by the State of Arkansas and reported to the General Land Office as swamp and overflowed lands, which selection was intended by the governor and understood by the secretary of the Interior to embrace the specific lands in controversy in this suit, and the government land records at that date showed that the specific lands had been selected by the state, and that such selection had been approved by the secretary of the Interior. At that time the said lands remained vacant and unappropriated, and were not interfered with by an actual settlement under any law of the United States. On the date last mentioned, Congress passed an act as follows:

"All lands selected and reported to the general land office as swamp and overflowed lands by the several states entitled to the provisions of said act of September 28, 1850, prior to March 3, A. D. 1857, are confirmed to said states respectively, so far as the same remain vacant and unappropriated, and not interfered with by any actual settlement under any law of the United States."

(Act of March 3, 1857; 6 Fed. Stat. Ann. 409.)

The foregoing act expressly confirmed in the state of Arkansas the title to the lands in controversy. From the date of said act until 1910, the said lands were carried on the tract books of the government land office at Washington, and in the office of the register and receiver at Little Rock as belonging to the State of Arkansas, and the government records showed that the United States had parted with its title thereto and claimed no interest therein.

The defendant alleges that though the act of March 3, 1857, confirmed the title to the land in controversy to the State of Arkansas, yet as a matter of fact, the secretary of the Interior issued and delivered to the state a patent for said lands on the 27th day of September, 1858. The selection made by the state was without reference to the government survey, but in issuing the patent, the secretary of the Interior described the lands in the terms of



the government survey. The description in the patent was as follows:

"Township 12 north, range 9 east. The whole of the township except section 16, containing fourteen thousand, five hundred and sixty-five acres, and three hundredths, according to the official plats of surveys of the said lands returned to the general land office by the surveyor general."

Treating the words "the whole of the township" as embracing only the surveyed area in the township, still the patent purported to convey the area in controversy because the official plat showed that it was a lake which had been meandered by the survey and that the survey area abutted on a non-navigable inland lake. The secretary of the Interior assumed that the official plat was correct, and he adopted the description taken from the official plat, which, in connection with the plat, purported to and did in fact embrace the area in controversy. The description in the patent, therefore, in connection with the official plat, described the identical lands which had been selected by and confirmed to the state, without any reference to the official plat. It was the intention of both parties that the area in controversy should pass under the patent, and after the execution of the patent, the area appeared on the government tract books as belonging to the State of Arkansas. It was so carried on the tract books until 1910.

The defendant alleges that in 1859 the State of Arkansas sold and conveyed the lands in controversy to W. B. Waldron and that the title to said lands has passed by mesne conveyances to this defendant. Since the date of the patent to Waldron, the state has treated the land as individual property, and has subjected it to state and county taxes, and to all other public impositions. The defendant alleged that all of the land in controversy was [embraced] in an overdue tax decree rendered on February 23, 1883, and was afterwards sold to the state under that decree. By the act of March 29, 1893, the state granted said lands to the St. Francis Levee District, and on December 12, 1894, the Levee District obtained a decree in Chancery Court of Mississippi County confirming its title to said lands.

45 Whatever title the Levee Board acquired afterwards passed by mesne conveyances to the defendant.

The defendant alleges that many differences arose between the United States and the State of Arkansas in the administration of the swamp land grant. The United States had conveyed many lands which had been selected and patented to the state; the state had conveyed many lands the title to which had never been confirmed to it; and the state owed the United States large sums of money on various accounts. A compromise of all of these differences was made by the respective parties, which compromise was approved by an act of the General Assembly of the State of Arkansas on March 10, 1897, and by act of Congress of April 29, 1898. The negotiations which culminated in the compromise continued through a long series of years. The state had refused to abide by the government survey in selecting its swamp lands, and it claimed the right to make additional selections of large bodies of swamp



lands. The United States refused to enter into a compromise unless the state would agree, by legislative enactment, that the field notes and plats of the government survey should be taken as conclusive in determining the lands which the state was entitled to under the swamp land grant. The state finally passed such an act on March 17, 1887.

During the negotiations for the compromise, and at the date of the compromise itself, both the land records of the United States and the State of Arkansas showed that the title to the lands in controversy was either in the State of Arkansas or in its grantees. The high contracting parties accepted that status as the basis of the compromise. By the terms of the compromise, the title of the grantees of the United States to swamp lands was confirmed; the title of the state's grantees of unconfirmed swamp lands were likewise confirmed; the state relinquished the right to make any further selections of swamp lands; and all of the differences between the two governments were settled and adjusted. The secretary of the Interior made a list of the lands affected by the state's relinquishment of its inchoate right, which list purported to embrace all of the swamp lands in the State, the title to which remained in the United States after the date of the compromise. The lands in controversy were not in that list. The land books of the government were corrected accordingly, and a certified copy of the list was delivered by the secretary of the Interior to the Commissioner of state lands of the State of Arkansas, and the state's books were corrected according to said lists.

46 The defendant alleges that both before and after the date of the compromise between the United States and the State of Arkansas, the attention of the land commissioner and of the secretary of the interior was called to the possibility of a mistake in the survey of the lands in controversy in 1840, and it was suggested to them that the area in controversy was land in place and not a lake at the date of the survey. The secretary of the Interior was urged to order a re-survey, and at his instance an investigation was made by the agents of the land department, who reported that no lake existed within the meander at the date of the survey. Notwithstanding these facts, several secretaries of the Interior rendered opinions to the [affect] that the integrity of the survey had not been shaken, and that the title to the lands in controversy had passed out of the United States into the State of Arkansas, and was then in the riparian proprietors. Some of these opinions or decisions were rendered before the compromise act and some afterwards, and they were generally known to that part of the public which was interested in the subject and were acted upon in good faith.

The defendant alleges that on December 10, 1892, R. E. Lee Wilson, through whom the defendant claims, wrote to the commissioner of the General Land Office to ascertain whether the government claimed any interest in the lands in controversy, referring to them as unsurveyed lands. Under date of January 13, 1893, the land commissioner replied that the lands "are not subject to survey and disposal by the United States for the reason that they belong

to the adjacent land owners." Mr. Wilson afterwards purchased these lands in reliance upon the assurance of the land commissioner that the plaintiff claimed no title to or interest in them, and he purchased the said land on an acreage basis, and paid the full market value for the lands at the time of such purchase.

The defendant alleges that not a human being is now living who was alive at the date of the original survey of said lands, and was familiar with the facts as they then existed. The lands have been treated both by the United States and the State of Arkansas as the private property of the defendant, and those under whom it claims. The defendant has paid large sums for state and county taxes, for levee taxes and for drainage assessments. The lands have been reclaimed by the construction of the levees in aid of which the swamp land grant was made, and by the construction of ditches and drains, which have been constructed at the private cost of this defendant. The said lands were practically valueless at the date of

47 their selection by the state in 1852, and of the patent in 1858 but, by the construction of the levees and the digging of canals through them, the taxes and assessments for which have been paid by this defendant and those under whom it claims, the said lands have been reclaimed and are now of great value, to-wit, the sum of \$20.00 an acre.

The defendant alleges that the United States for a great many years following the survey remained quiescent, and for many years afterwards was acquiescent, and that with a full knowledge of the facts, expressly confirmed the status shown by its land records and its public survey, and disclaimed any title to or interest in said lands, and induced not only the State of Arkansas but this defendant and those under whom it claims to act upon such disclaimer; and the defendant says that it would be unjust and inequitable to permit the United States to change its position to the detriment of this defendant, and that in equity and good conscience the plaintiff is estopped from doing so.

#### XXIV.

The defendant respectfully shows unto the court that the State of Arkansas acquired title to the lands in controversy by a specific selection of them as swamp and overflowed lands in 1852, which selection was approved by the secretary of the Interior on May 11, 1853, and was confirmed by the act of Congress of March 3, 1857. The title thus confirmed to the state has passed by mesne conveyance to this defendant.

#### XXV.

The defendant further says that under the facts set forth in this answer it is an innocent purchaser of the lands in controversy for value without notice, of the plaintiff's claim, and as such innocent purchaser is entitled to hold said lands as against the plaintiff.

COLEMAN & LEWIS,  
*Solicitors for Defendant.*

Endorsed: Filed in the District Court February 6, 1914.

## PLAINTIFF'S EXHIBIT "B."

*Subdivision of T. 12 N. R. 9 E.*

Jan. 4th, 1841.

Commenced the Subdivision of T. 12 N. of the base line R. 9 E. of the 5th P. M.

Thence adjusted my compass to the E. Boundary of said Township in the following manner with my compass adjusted to  
48 a variation of 7.30 E. I run N. along the E. Side of Sec. 36 at 40.03 chains a point 22 links E. of the  $\frac{1}{4}$  Sec. Cor. post. I therefore adjusted my compass to a variation of 7°. 45' E.

North between Sec-. 35 and 36 T. 12 N. of the Base line R. 9 E. of the 5 Principal Meridian.

31.70 An Elm 8 ins. dia.

40.00 Set  $\frac{1}{4}$  Sec. Cor. post from which a Maple 30 ins. dia bears S. 26 E. 27 links and an Ash 6 ins. dia. bears N. 34 E. 25 links.

60.63 A maple 24 ins. dia.

80.00 Set a post cor. to Sec-. 25, 26, 35 and 36, from which a Hickory 12 ins. dia. bears N. 54 E. 44 links and a gum. 30 ins. dia. bears S.  $41\frac{1}{2}$  W. 17 links.

Land low, wet and unfit for cultivation. Timber gum. ash, elm, cottonwood and willow, undergrowth cane vines and briars.

S.  $89\frac{1}{2}$  E. on a random line between Sec-. 25 and 36 T. 12 N. R. 9 E.

40.00 Temporary  $\frac{1}{4}$  Sec. Cor. post.

79.55 Intersected Range line 18 links N. of cor. to Sec-. 25 and 36.

West on a true line between Sec-. 25 and 36 T. 12 N. R. 9 E.

30.00 A willow 30 ins. dia.

39.77 $\frac{1}{2}$  Set  $\frac{1}{4}$  Sec. Cor. post from which an Ash 6 ins. dia. bears N. 35 W. 17 links and a White Oak 8 ins. dia. bears S.  $22\frac{1}{2}$  E. 21 links.

52.75 A gum 12 ins. dia.

79.55 To the cor. to Sec-. 25, 26, 35 and 36.

Land low, wet and unfit for cultivation. Timber willow cottonwood, ash, hackberry and gum. Undergrowth some cane, vines and briars.

North between Sec-. 25 and 26 T. 12 N. R. 9 E.

21.75 An ash 10 ins. dia.

40.00 Set a  $\frac{1}{4}$  Sec. cor. post from which an ash 8 ins. dia. bears N. 32 W. 15 links and a willow 6 ins. dia. bears S. 47 E. 8 links.

78.93 An over cup oak 14 ins. dia.

- 49
- 80.00 Set a  $\frac{1}{4}$  sec. cor. post to Sec. 23, 24, 25 and 26 from which a willow 10 ins. dia. bears S. 27 E. 14 links and a cottonwood 6 ins. dia. bears N. 9 W. 24 links.  
Land [principal-y] covered with water and unfit for cultivation. Timber willow, cottonwood, ash and cypress undergrowth privy and elbow.  
S.  $89\frac{3}{4}$  East on a random line between Sec. 24 and 25 T. 12 N. R. 9 E.
- 40.00 Temporary  $\frac{1}{4}$  Sec. cor. post.
- 79.46 Intersected the range line 24 links S. of Cor. to Sec. 24 and 25 T. 12 N. R. 9 E.  
West on a true line between Sec. 24 and 25 T. 12 N. R. 9 E.
- 23.71 A Percimmon 10 ins. dia. bears.
- 39.73 Sec.  $\frac{1}{4}$  Cor. post from which an Ash 18 ins. dia. bears N. 18 E. 8 links and an over cup oak 10 ins. dia. bears S.  $18\frac{1}{2}$  W. 6 links.
- 62.12 A gum 16 ins. dia.
- 79.46 The cor. to Sec. 23, 24, 25 and 26.  
Land [principal-y] under water and unfit for cultivation Timber willow, cottonwood, ash, gum and sycamore undergrowth privy and small patches of cane.  
North between Sec. 23 and 24 T. 12 N. R. 9 E.
- 15.75 A cottonwood 40 ins. dia.
- 40.00 Set  $\frac{1}{4}$  sec. cor. post from which a gum 6 ins. dia. bears S. 41 W.  $15\frac{1}{2}$  links and an over cup oak 6 ins. dia. bears N.  $40\frac{1}{2}$  E. 23 links.
- 42.66 A willow 10 ins. dia.
- 80.00 Set a post cor. to Sec. 13, 14, 23 and 24 from which an ash 6 ins. dia. bears N.  $46\frac{1}{2}$  W. 8 links and an ash 7 ins. dia. bears S. 40 E. 17 links.  
Land principally covered with water and unfit for cultivation. Timber willow, cottonwood, gum and ash undergrowth privy and small patches of cane.  
S.  $89\frac{3}{4}$  E. on a random line between Sec. 13 and 24 T. 12 N. R. 9 E.
- 40.00 Set temporary  $\frac{1}{4}$  sec. cor. post.
- 50
- 79.00 Intersected the range line 50 links S. of cor. to Sec. 13 and 24.  
West on a true line between Sec. 13 and 24 T. 12 N. R. 9 E.
- 22.44 A ash 12 ins. dia.
- 39.50 Set  $\frac{1}{4}$  cor. post from which a hackberry 18 ins. dia. bears S. 72 E. 22 links and a percimmon 10 ins. dia. bears S.  $10\frac{1}{4}$  W. 21 links.
- 60.36 An ash 12 ins. dia.
- 79.00 The cor. to Sec. 13, 14, 23 and 24.

Land [principal-y] covered with water and unfit for cultivation Timber willow cottonwood cypress and gum undergrowth privy and elbow.

Jan. 1st, 1841.

North between sec-. 34 and 35 T. 12 N. of the base line R. 9 E. of the 5th P. M.

23.43 A hickory 12 ins. dia.  
40.00 Set  $\frac{1}{4}$  cor. post from which a maple 10 ins. dia. bears S.  $12\frac{1}{2}$  W. 8 links and a maple 16 ins. dia. bears N.  $63\frac{1}{2}$  E. 45 links.

55.66 A gum 36 ins. dia.  
80.00 To the post cor. to sec-. 26, 27, 34 and 35 from which an ash 8 ins. dia. bears S.  $13\frac{1}{4}$  E. 15 links and an Elm 6 ins. dia. bears N.  $30\frac{1}{2}$  W. 24 links.

Land low wet and unfit for cultivation Timber willow small ash and some gum undergrowth privy and some vines.

East on a random line between Sec-. 26 and 35 T. 12 N. R. 9 E.

40.00 Set temporary  $\frac{1}{4}$  sec. cor. post.  
80.37 Intersected line 75 links S. of cor. to Sec. 25, 26, 35 and 36.

West on a true line between Sec. 26 and 35 T. 12 N. R. 9 E.

23.00 A hackberry 8 ins. dia.  
40.18 $\frac{1}{2}$  Set  $\frac{1}{4}$  sec. cor. post from which an Elm 12 ins. dia. bears N.  $18\frac{1}{2}$  W. 17 links and a willow 10 ins. dia. [10 ins. dia.] bears S. 4 E. 7 links.

67.01 A gum 18 ins. dia.

51

80.37 To the cor. to Sec-. 26, 27, 33 and 34.

Land low, wet and unfit for cultivation Timber willow cottonwood ash and gum undergrowth cane vines and briers.

North between sec-. 26 and 27 T. 12 N. R. 9 E.

21.35 A willow 8 ins. dia.

37.50 Intersected the S. E. side of sunk lake impassable and navigable where set a post cor. to fracl. Sec-. 26 and 27 from which a willow 8 ins. dia. bears S. 13 W. 12 links and an ash 6 ins. dia. bears S. 34 E. 17 links.

Thence offset E. 15.00

N. 28.00

W. 15.00 To the true line in advance of sunk lands, where set a post cor. to fracl. Sec-. 26 and 27 from which a willow 10 ins. dia. bears N.  $12\frac{1}{2}$  E. 11 links and an ash 6 ins. dia. bears N.  $9\frac{1}{2}$  W. 36 links.

65.76 A willow 12 ins. dia.

80.00 Set a post cor. to Sec-. 22, 23, 26 and 27 from which

an over cup oak 16 ins. dia. bears N.  $6\frac{1}{4}$  W. 14 links and an ash 6 ins. dia. bears S.  $34\frac{1}{2}$  E. 9 links.

Land [principal-y] covered with water and unfit for cultivation Timber willow ash cypress and cottonwood undergrowth privy and small patches of cane.

East on a random line between Sec-. 23 and 26 T. 12 N. R. 9 E.

40.00 Temporary  $\frac{1}{4}$  Sec. cor. post.

80.50 Fell N. of cor. to sec-. 23, 24, 5 and 26. 45 links West on a true line between Sec-. 23 and 26 T. 12 N. R. 9 E.

34.85 A locust 6 ins. dia.

40.25 Set a  $\frac{1}{4}$  sec. cor. post from which an ash 7 ins. dia. bears S.  $81\frac{1}{2}$  W. 14 links and an overcup oak 7 ins. dia. bears N.  $39\frac{3}{4}$  E. 7 links.

54.27 A willow 12 ins. dia.

80.50 To the cor. to Sec-. 22, 23, 26 and 27.

Land principally covered with water and unfit for cultivation. Timber willow ash cypress and cottonwood [undergro-th] privy and small patches of cane.

52

North  $89\frac{3}{4}$  East on a true line between Sec-. 22 and 27 T. 12 N. R. 9 E.

4.29 Intersected the sunk lands on the E. side of lake where set a post cor. to fract. Sec-. 22 and 27 from which a cypress 6 ins. dia. bears S.  $77\frac{1}{2}$  E. 34 links and a willow 12 ins. dia bears N.  $85\frac{1}{4}$  E. 50 links.

Land [principal-y] covered with water and unfit for cultivation. Timber willow, ash and cypress undergrowth None.

Jan. 8th, 1840.

North between Sec-. 22 and 23 T. 12 N. R. 9 E.

24.00 An ash 10 ins. dia.

40.00 Sec. cor. post from which a willow 12 ins. dia. bears N.  $12\frac{1}{2}$  W. 50 links and a willow 10 ins. dia. bears S.  $37\frac{1}{2}$  E. 25 links.

52.96 A willow 18 ins. dia.

80.00 Set a post cor. to sec-. 14, 15, 22 and 23 from which an ash 18 ins. dia. bears N.  $34\frac{1}{2}$  W. 17 links and an ash 18 ins. dia. bears S.  $43\frac{1}{2}$  E. 22 links and an ash 18 ins. dia. bears S.  $43\frac{1}{2}$  E. 22 links.

Land low wet and unfit for cultivation. Timber willow ash gum and cottonwood undergrowth privy and small patches of cane.

S.  $89\frac{3}{4}$  East between Sec-. 14 and 23 T. 12 N. R. 9 E.

Set temporary  $\frac{1}{4}$  Sec. cor. post.

40.00 Fell 28 links S. of cor. to Sec. 13, 14, 23 and 24 west on a true line between Sec-. 14 and 23 T. 12 N. R. 9 E.

[A-] ash 24 ins. dia.

80.60 Set  $\frac{1}{4}$  sec. cor post from which an over cup oak 14 ins.

14.06

40.30

dia. bears N.  $32\frac{1}{2}$  E. 9 links and a red oak 6 ins. dia. bears S.  $54\frac{1}{2}$  W. 11 links.

55.63

An ash 18 ins. dia.

80.60

To the cor. to sec. 14, 15, 22 and 23.

Land [principal-y] covered with water and unfit for cultivation. Timber willow cottonwood ash and gum undergro-th privy and vines.

Jan. 9th, 1841.

53

North between Sec. 33 and 34 T. 12 N. R. 9 E.

22.71

An ash 8 ins. dia.

40.00

Set  $\frac{1}{4}$  sec. cor. post from which a hackberry 10 ins. dia. bears N.  $73\frac{1}{2}$  E. 23 links and an overcup oak 10 ins. dia. bears S.  $83\frac{3}{4}$  W. 21 links.

61.14

An over cup oak 10 ins. dia.

80.00

Set a post cor. to Sec. 27, 28, 33 and 34 from which a Spanish Oak 18 ins. dia. bears S.  $12\frac{1}{2}$  E. 17 links and a Spanish Oak 18 ins. dia. bears N.  $43\frac{1}{2}$  W. 6 links.

Land low wet and unfit for cultivation. Timber gum, oak, ash, maple [undergro-th] privy cane vines and briers. S.  $89\frac{3}{4}$  on a random line between Sec. 27 and 34 T. 12 N. R. 9 E.

40.00

Set temporary  $\frac{1}{4}$  sec. cor. post.

80.12

Fell S. of cor. to Sec. 26, 27, 34 and 35—30 links West on a true line between sec. 27 and 34 T. 12 N. R. 9 E.

25.00

A willow 10 ins. dia.

40.06

Sec.  $\frac{1}{4}$  sec. cor. post from which a willow 16 ins. dia. bears S.  $49\frac{1}{2}$  W. 5 links and a willow 12 ins. dia. bears N. 49 E. 7 links.

45.57

An ash 18 ins. dia.

80.12

The cor. to sec. 27, 28, 33 and 34.

Land [principal-y] covered with water and unfit for cultivation. Timber willow ash, gum and cottonwood [undergro-th] privy.

N.  $89\frac{1}{2}$  West on a true line between Sec. 28 and 33 T. 12 N. R. 9 E.

33.25

a gum 16 ins. dia.

40.00

Set  $\frac{1}{4}$  sec. cor. post from which an ash 16 ins. dia. bears N.  $42\frac{1}{2}$  W. 10 links and a hackberry 10 ins. dia. bears N.  $62\frac{1}{2}$  E.  $14\frac{1}{2}$  links.

49.00

Intersected the left bank of large bayou runs S. W. navigable where set a post cor. to Sec. 28 and 33 from which a willow 10 ins. dia. bears S.  $60\frac{3}{4}$  E. 17 links and a Percoy 6 in. dia. bears N. 65 E. 26 links.

54

Land low wet and unfit for cultivation. Timber willow and cottonwood gum and elm [undergro-th] vines and briers.

Jan. 11th, 1841.

24.42

North between Sec. 27 and 28 T. 12 N. R. 9 E.  
A willow 10 ins. dia.

34.90

A bayou 100 chains wide runs N. W.

40.00

Set  $\frac{1}{4}$  sec. cor. post from which an ash 10 ins. dia. bears S.  $17\frac{1}{2}$  E. 25 links and an overcup oak 20 ins. dia. bears N.  $39\frac{1}{2}$  W.  $21\frac{1}{2}$  links.

49.14

A wash 24 ins. dia.

55.50

Intersected left bank of large bayou runs S. W. navigable where set a post cor. to frac. Sec. 27 and 28 from which a hackberry 5 ins. dia. bears S.  $50\frac{1}{2}$  E. 15 links and a hackberry 6 ins. dia. bears S. 26 W. 21 links.

58.08

To the right bank of Bayou distance across obtained by calculation where set a post cor. to frac. bears N. 19 E. 28 links and a cottonwood 14 ins. dia. Sec. 27 and 28, from which a hackberry 8 ins. dia. bears N.  $75\frac{1}{4}$  W. 25 links.

80.00

Set a post cor. to Sec. 21, 22, 27 and 28, from which a Spanish Oak 24 ins. dia. bears N.  $29\frac{3}{4}$  W. 23 links and an overcup oak 7 ins. dia. bears S.  $70\frac{1}{2}$  E. 36 links Land low, wet and unfit for cultivation. Timber cottonwood, willow, hackberry, ash and oak [undergro-th] privy and elbow.

East on a true line between Sec. 27 and 28 T. 12 N. R. 9 E.

3.45

Intersected right bank of large Bayou runs S. where set a post cor. to frac. sec. 22 and 27 from which an ash 6 ins. dia. bears S.  $58\frac{3}{4}$  W. 19 links and a willow 10 ins. bears N.  $66\frac{1}{2}$  W. 21 links.

6.45

To the left bank of said Bayou distance across obtained by calculation where set a post cor. to frac. Sec. 22 and 27 from which a cypress 18 ins. dia. bears N. 8 E. 7 links and a cypress 10 ins. dia. S.  $34\frac{1}{4}$  E. 18 links.

8.89

Intersected open lake impassable and navigable where set a post cor. frac. Sec. 22 and 27 from [from] which an over cup oak 40 ins. dia. bears S. 53 W. 25 links and a hackberry 6 ins. dia. bears N.  $79\frac{3}{4}$  W. 16 links. The cor. to frac. Sec. 22 and 27 on the opposite side of the sunk lands cannot be seen from this place. Land low, wet and unfit for cultivation. Timber willow ash cypress and hackberry [undergro-th] privy.

55

Jan. 12th, 1841.

North between Sec. 21 and 22 T. 12 N. R. 9 E.

6.48

A willow 12 ins. dia.

40.00

Sec.  $\frac{1}{4}$  Sec. post from which a willow 10 ins. dia. bears S. 25 W. 9 links and an ash 6 ins. dia. bears N.  $49\frac{1}{4}$  E. 7 links.

58.76

A hackberry 12 ins. dia.

63.50

Intersected left bank of large bayou run S. W. navigable where set a post cor. to frac. Sec. 21 and 22 from which a cottonwood 10 ins. dia. bears S. 4 W. 17 links and a box elder 9 ins. dia. bears S.  $10\frac{1}{2}$  E. 16 links.

66.55

To the right bank of said bayou distance across obtained by calculation where set a post cor. to frac. sec.



- 21 and 22 from which a box elder 8 ins. dia. bears N. 35 W.  $3\frac{1}{2}$  links and a cottonwood 12 ins. dia. bears N.  $35\frac{1}{2}$  E. 14 links.
- 73.49 An Ash 30 ins. dia.  
80.00 Set a post cor. to sec. 15, 16, 21 and 22, from which a cottonwood 12 ins. dia. bears S.  $19\frac{3}{4}$  W. 8 links and an ash 16 ins. dia. bears N.  $57\frac{1}{4}$  E. 25 links. Land, low, wet and unfit for cultivation. Timber willow cottonwood ash and gum [undergro-th] a little cane West on a true line between sec. 21 and 28 T. 12 N. R. 9 E.
- 36.21 A Hickory 12 ins. dia.  
40.00 Set  $\frac{1}{4}$  Sec. cor. post from which an elm 9 ins. dia. bears N. 88 W. 11 links and a hackberry 8 ins. dia. bears S.  $72\frac{1}{2}$  E. 7 links.
- 45.76 A hackberry 10 ins. dia.  
47.91 Intersected left bank of large bayou runs S. W. navigable where set a post cor. to fracl. Sec. 21 and 28 from which a hackberry 8 ins. dia. bears S.  $57\frac{1}{2}$  E. 10 links and a hackberry 6 ins. dia. bears N. 33 E. 19 links. Land low, wet and unfit for cultivation. Timber pine, willow, cypress, ash and gum [undergro-th] some cane.
- 56 S.  $89\frac{3}{4}$  E. on a true line between Sec. 15 and 22 T. 12 N. R. 9 E.
- 3.26 Intersected the right bank of large bayou runs a little W. of South navigable where set a post cor. to fracl. Sec. 15 and 22 from which a Hickory 14 ins. dia. bears S. 59 W. 50 links and a hickory 12 ins. dia. bears N. 9 W. 21 links Land to *d* rate soil subject to overflow. Timber gum hickory oak and elm [undergro-th] cane vines and briers.
- N.  $89\frac{3}{4}$  W. on a true line between Sec. 15 and 22 T. 12 N. R. 9 E.
- 23.08 An ash 18 ins. da.  
40.00 Set  $\frac{1}{4}$  sec. cor. post from which an Ash 6 ins. dia. bears S. 32 W. 11 links and an over cup oak 6 ins. dia. bears N.  $62\frac{3}{4}$  E. 22 links.
- 59.04 An Elm 14 ins. dia.  
73.83 Intersected left bank of large Bayou where set a post cor. to fracl. sec. 15 and 22 from which a cottonwood 14 ins. dia. bears S. 76 R. 7 links and a willow 12 ins. dia. bears N.  $67\frac{3}{4}$  E. 22 links the cor. to fracl. Sec. 15 and 22 on the opposite side of the bayou bears N.  $89\frac{3}{4}$  W. Thence N. 50 links from this point the cor. to the opposite side of the bayou bears S. 80.15 W. land low wet and unfit for cultivation Timber willow cottonwood and cypress [undergro-th] privy and some cane.
- Jan. 13th, 1840.
- \* \* \* \* \*
- 12.66 North between Sec. 32 and 33, T. 12 N. R. 9 E.  
Intersected the left bank of Carson Bayou runs S. W. where set a post cor. to fracl. Sec. 32 and 33 from which

a cottonwood 12 ins. dia. bears S. 25 W. 12 links and a Sycamore 6 ins. dia. bears S. 74 E. 5 links.

16.89 To the right bank of said bayou distance across obtained by calculation where set a post cor. to frac. Sec. 32 and 33 from which a hackberry 12 ins. dia. bears N. 69½ W. 27 links and a hackberry 12 in. dia. brs. N. 26½ E. 8 lks.

57

27.18 A willow 8 ins. dia.

40.00 Set ¼ sec. cor. post from which an ash 6 ins. dia. bears N. 32½ W. 13 links and a willow 6 ins. dia. bears S. 21 E. 27 links.

56.40 An ash 8 ins. dia.

80.00 Set a post cor. to sec. 28, 29, 32 and 33 from which a cottonwood 18 ins. dia. bears N. 46½ E. 18 links and a willow 8 ins. dia. bears S. 13 W. 25 links.

Land low wet and unfit for cultivation.

Timber willow cottonwood gum and ash undergrowth some cane vines and briers.

S. 89½ East on a true line between Sec. 28 and 33 T. 12 N. R. 9 E.

21.00 A willow 8 in. dia.

27.50 Intersected the left bank of large bayou where set a post cor. to frac. sec. 28 and 33 from which a willow 10 ins. dia. bears N. 48½ E. 44 links and a Maple 8 in. dia. brs. 83 E. 43, the cor. to frac. Sec. 28 and 33 on the opposite side of bayou bears E. from this point then thence N. 50 lks. from this point said cor. bears S. 82 E.

Land 2d rate soil and unfit for cultivation.

Timber gum willow cottonwood and ash [undergro-th] privy and elbow.

North between Sec. 28 and 29 T. 12 N. R. 9 E.

16.00 An ash 8 ins. dia.

40.00 Set ¼ sec. cor. post from which a willow 6 ins. dia. bears N. 32 W. 18½ links and a locust 6 ins. dia. bears S. 18 E. 27 links.

70.30 An ash 12 in. dia.

80.00 Set a cor. to sec. 20, 21, 28 and 29 from which a cottonwood 10 ins. dia. bears N. 32 E. 19 and an ash 8 ins. dia. bears S. 15 W. 26½ links.

Land low wet and unfit for cultivation Timber gum willow cottonwood and ash [undergro-th] privy and elbow.

S. 89½ East on a true line between Sec. 21 and 28 T. 12 N. R. 9 E.

13.00 A willow 14 ins. dia.

58

28.75 Intersected right bank of large bayou navigable where set a post cor. to frac. sec. 21 and 28 from which a cottonwood 12 ins. dia. bears S. 20 W. 44 links and an ash

marked B. T. 24 ins. dia. bears N.  $57\frac{3}{4}$  E. 18 links  
No other bearing tree convenient the cor. to fractl. Sec.  
21 and 28 on the opposite of the bayou bears E. Thence  
N. 50 links from this point said cor. bears S.  $81\frac{3}{4}$  E.

Land low wet and unfit for cultivation Timber willow  
gum oak ash and cottonwood [undergro-th] some cane  
vines and briers.

\* \* \* \* \*

Commenced at the cor. to fractl. Sec. 22 and 27 on the E. side  
of lake and meander along said Lake in Sec. 22.

	North	65.00	
Thence	N. 25 W.	5.00	
	N. 50 W.	5.50	
	West	18.00	
	S. $81\frac{1}{2}$ W.	20.00	
	S. $74\frac{1}{2}$ W.	18.00	
	S. 50 W.	15.00	
	S. 20 W.	3.00	
	South	12.00	
	S. $10\frac{1}{2}$ E.	15.00	
	S. 25 E.	12.00	
	South	3.30	To the mouth of large
Bayou which drains lake	Thence down the right bank of said bayou		
	S. 73 W.	2.00	
	S. 14 W.	6.56	
	South	3.45	To the cor. to fractl. Sec.

22 and 27 Land [principa-ly] under water and unfit for cultivation  
Timber willow, cypress ash and gum [undergro-th] privy and elb.

\*See from E. H. Van Antwerp Exmr. Surveys April 21, 1910,  
27580 reporting errors.

Commenced at the cor. to fractl. Sec. 22 and 27 on the W. side of  
Lake and meander along the W. side of said lake in Sec. 22 T. 12  
N. R. 9 E. Thence S. N.  $28\frac{1}{2}$  E. 9.00 To the Bayou which drains  
the lake thence along the left bank of said bayou down stream

	S. $42\frac{1}{4}$ W.	8.00	
	S. $32\frac{1}{2}$ W.	2.40	To the cor. to
fractl. Sec. 22 and 27	Land low wet and unfit for cultivation Timber		
	gum cypress oak and ash undergrowth privy.		

Commenced at the cor. to fractl. Sec. 22 and 27 on the left bank  
of large bayou and meander along the left bank of said bayou in  
Sec. 27 T. 12 N. R. 9 E.

59	Thence	S. $61\frac{1}{4}$ W.	16.00
		S. $13\frac{1}{4}$ W.	7.00
		S. $60\frac{1}{4}$ W.	3.58

To the cor. to frac'l.

Sec. 27 and 28. Land low wet and unfit for cultivation Timber  
cottonwood willow oak hackberry and ash undergrowth pr  
elbow.

Commenced at the cor. to frac'l S. 22 and 27 on the right bank  
of large Bayou in Sec. 27 and meander along the right bank of  
said Bayou in Sec. 27 T. 12 N. R. 9 E.

Thence S. 9 W. 20.00

S. 8½ W. 2.20 To the cor. to frac'l.

Sec. 27 and 28. Land low wet and unfit for cultivation Timber willow cottonwood oak and ash and hackberry undergrowth privy and elbow.

Jan. 23d, 1841.

Endorsed: Filed in the District Court December 13, 1913.

PLAINTIFF'S EXHIBIT "CC."

10,998—1889.

E. F. B.

E. F. B.

F. L. C.

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, February 10, 1890.

The Commissioner of the General Land Office.

SIR: I am in receipt of your report of December 17, 1889, upon the letter of Hon. J. K. Jones, United States Senate, relative to the proposed change in the method of determining and adjusting the claim of the State of Arkansas, under the several acts of Congress granting to said State the swamp and overflowed lands found therein, and providing for indemnity for such of said lands that have been sold subsequently to the act of September 28, 1850, and prior to the act of March 3, 1857.

It appears that the State of Arkansas, by an act of its general assembly, approved March 17, 1885, proposed a change in the method of adjusting the grant of swamp lands to that State, by taking the field notes of surveys as proof of the character of the land in certain cases, which was rejected by Secretary Lamar, for the reason that the State proposed to accept as final the field notes of survey on file in the office when such notes showed conclusively the character of the land, and when not so shown, the State reserved the right to present other evidence, and in no case to be bound by the field notes where the survey was made subsequent to the year 1856, it being stated in the report of the Commissioner, upon which said decision was based, that it is difficult to determine the true character of the land by the field notes made prior to 1856, and that the surveys and field notes made since that date are supposed to show more clearly the character of the land, and that the field notes should be made conclusive, whether made before or after 1856, and the method should not be changed.

Subsequently, the general assembly passed another act, approved March 19, 1887, a copy of which was referred to the Department, in which the State renewed its application for a change in the method of adjustment, which was again rejected by Secretary Lamar, for the following reasons:

"1. That the proposal to take the field notes of survey as evidence

of the character of the land was limited to cases where such notes show conclusively the character of the land, thus making two methods of establishing the claims of the State.

"2. That it introduced a classification of lands not theretofore recognized in the adjustment of swamp land claims: i. e. 'wet lands.'"

With the communication of Senator Jones is submitted copies of two acts, one approved March 18, 1889, and the other approved March 19, 1889, amending the act of March 19, 1887, and also an act approved April 8, 1889, authorizing the Governor to compromise and settle the claims of the State of Arkansas against the United States, arising under the several acts of Congress granting to said State the swamp and overflowed lands found therein and indemnity for such as may have been sold subsequent to the act of September 28, 1850, and prior to the act of March 3, 1857, which had been transmitted to the Department by T. G. Riley, the agent for the State of Arkansas.

You report that the act of March 18, 1889, does not remove the objections of your office and the Department to the preceding legislation, because, although the phraseology is changed slightly, the objectionable limitations are retained with the words "wet lands;" but in view of the decisions of the Department in the case of the State of Louisiana (5 L. D., 514-598), and in similar decisions regarding the lands in Minnesota, holding that if the field notes of survey had been adopted as the basis of adjustment, your  
61 office should submit for approval any tracts appearing from the same to be of the class granted (except where there is reason to believe that the field notes are fraudulent), and where such notes do not show the lands to be of that character, the State must establish its claim thereto by other satisfactory evidence; and in view of the decision in the case of Poweshiek County, Iowa (9 L. D., 124), holding that the act of 1850 granted not only such lands as might strictly come under the description "swamp lands," but also such as are so "wet" as to be rendered thereby unfit for cultivation, you recommend that said objection heretofore made may now be waived, and the work of adjusting the claim of said state be commenced without further delay.

I see no objection to the proposed change. By said acts the State agrees to accept as final and conclusive, in determining the character of such lands, the original field notes of the official survey, and the resurvey of such lands by the United States in all cases "where such field notes show conclusively the naturally wet, swampy, or overflowed, or the naturally non-west, non-swampy, or non-overflowed character of the lands.

If the field notes of survey show conclusively the character of the land, I can see no reason why any other evidence should be required; but where it is questioned, either by the State or by the United States, that the field notes do not show the true character of the land, then I can see no reason why either the government or the state might not be permitted to offer evidence to show its true character at the date of the grant.

Every smallest legal subdivision, the greater part of which was at the date of the grant "wet and unfit for cultivation," by reason of its swamp and overflowed condition, passed to the State under the grant of September 28, 1850, and it is the duty of the Secretary to determine what lands were of the description granted by the act, and, while he may adopt the field notes of survey as evidence of this condition, he is not bound by any rule, but may adopt such as may, in his judgment, accurately determine their true character. Nor could any rule adopted by him, in my opinion, bind his successor as to lands the character of which had not been determined previously. As stated by Secretary Lamar in the case of the State of Oregon (5 L. D., 31):

"It is the duty of the Secretary of the Interior to determine what lands are of the description granted by the act, and his office is made the tribunal whose decision on that subject is to control. While the Department has adopted general methods for designating such lands, the Secretary is not restricted to any plan, but may adopt and employ such agencies as may in his judgment satisfactorily determine what lands are of the character granted by the act. It is immaterial what means are employed, the essential object being the ascertainment of the character of the land. Therefore I do not concur in the view advanced by Governor Moody, that the Department having adopted one plan is estopped from employing any other agency to determine the character of lands which have not been ascertained by such adopted plan."

While I do not intend by this to hold that the Department has approved of the plan submitted by the State of Arkansas so as to be binding as a rule upon any succeeding Secretary, I can see no objection to it as a rule to aid your office in determining the true character of the lands, and you will therefore proceed to adjust the claim of the State under said rule herein stated.

Very respectfully,

JOHN W. NOBLE, *Secretary.*

Endorsed: Filed in the District Court on December 13, 1913.

PLAINTIFF'S EXHIBIT "DD."

1889—140,549.

J. V. W. E. K.  
J. C. D. T. P.

K.  
Com'r.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., December 17, 1889.

Address only the Commissioner of the General Land Office.

Hon. John W. Noble, Secretary of the Interior.

SIR: I am in receipt, by reference, for report, of the letter (herewith returned), addressed to you on the 26th ult., by Hon. J. K.

Jones, U. S. Senate, touching a proposed change in the method adopted for the adjustment of the claims of the State of Arkansas under the several acts of Congress relating to swamp and overflowed lands which apply to said State, and have the honor to report as follows:

Shortly after the passage of the act of Sept. 28, 1850 (9 Stat., 519), the authorities of the State of Arkansas agreed to  
63 make selections of swamp and overflowed lands by their own agents and furnish proof that the lands were of the class contemplated by the grant.

The records shows that the State by act of the General Assembly approved March 17, 1885, proposed a change in the method of adjusting the claims of the State whereby the field notes of public survey were to be taken as proof in certain cases. This proposal was rejected by Mr. Secretary Lamar, Aug. 15, 1885, for reasons given in office report of May 21, 1885 (4 L. D., 295), and this decision was adhered to by the Secretary in his subsequent letter to State agent Yeakle dated Aug. 28, 1885 (4 L. D., 297).

An act of the General Assembly amendatory of the foregoing was approved March 19, 1887, and a certified copy of the same transmitted to the Department by the Governor April 8, 1887, with a renewal of the application for a change in the method of adjustment which was refused May 16, 1887 (5 L. D., 636), for the following reasons:

1. That the proposal to take the field notes of survey as evidence of the character of the land was limited to cases where such notes show conclusively the character of the land, thus making two methods of establishing the claims of the State.

2. That it introduced a classification of lands not theretofore recognized in the adjustment of swamp land claims; i. e. "wet lands."

The General Assembly passed another act which was approved March 18, 1889, amending the act of March 19, 1887, and a copy of this act and a copy of another act approved April 8, 1889, were filed in the Department May 27, 1889 by T. G. Riley, state agent and referred to this office.

The act of March 18, 1889, does not remove the objections of this office and the Department to the preceding legislation, because, although the phraseology is changed slightly the objectionable limitations are retained with the words "wet lands."

The act of April 8, 1889, authorizes the Government to compromise, adjust and settle the claims of the State against the United States.

The State of Michigan agreed to accept the field notes of survey as the basis of adjustment of her claims under the swamp grant, the same to be conclusive as to the character of the land claimed.

64 Under date of Feb'y 26, 1886 (4 L. D., 415) Secretary Lamar decided, in the case of Cushing et al., State of Michigan, that where the field notes of survey have been adopted as the basis of adjustment and the character of the land cannot be determined therefrom, the State must establish its claim by other

satisfactory evidence and directed a hearing as to the character of the land.

In the case of the State of Louisiana (5 L. D., 514 & 598), the Secretary held that if the field notes of survey had been adopted as the basis of adjustment this office should proceed to submit for approval any tracts appearing from the same to be of the class granted (except where there is reason to believe the field notes are fraudulent), and where such notes do not show the land to be of that character the State must establish its claim thereto by other satisfactory evidence.

Similar decisions have been rendered regarding lands in Minnesota, which State also adopted the field notes as the basis for adjustment of her claims without limitation.

The question of right under the swamp grant to "wet lands" is considered in your decision of July 19, 1889, upon the swamp land indemnity claim for Poweshiek County, Iowa (9 L. D. 124). See also R. R. Co. vs. Smith, 9 Wall., 95.

In view of the late decision of the Department above cited, I suggest that, if upon consideration of the objections heretofore raised to the action proposed by the State of Arkansas, in your opinion, said objections may now be waived, the work of adjusting the claims of said State can be commenced without further delay.

Very respectfully,

LEWIS A. GROFF,  
Commissioner.

Endorsed: Filed in the District Court, on December 13, 1913.

#### PLAINTIFF'S EXHIBIT "I."

*Field Notes of the Survey of the Subdivisional Lines Through Moon Lake, in Sections Nos. Twenty-two (22), Twenty-seven (27), and Twenty-six (26), in Township No. Twelve (12) North Range No. Nine (9) East, of the Fifth Principal Meridian, Arkansas.*

As surveyed by Edwin H. Van Antwerp, Examiner of Surveys, under Commissioner's letter, dated March 15th, 1910.

65 Survey commenced March 21, 1910, Survey completed April 9th, 1910.

#### Moon Lake.

Township No. 12 North of Range No. 9 East of the 5th Prin. Mer.

Chains. Survey commenced March 21st, 1910, and executed with a Young & Sons' light mountain transit, No. 7147, with solar attachment. The horizontal limb is provided with two double verniers placed opposite to each other, reading to single minutes of arc, which is also the least count of the verniers of the latitude and declination arcs. I ex-



amined the adjustments of the transit and [correct-] the level and collimation errors; then, to test the solar apparatus, by comparing its indications, resulting from solar observations, made during a. m. and p. m. hours, with a meridian determined by observation on Polaris, I proceed as follows:

At the meridian, established by me from Polaris, on June 24<sup>th</sup>, 1909, near the  $\frac{1}{4}$  sec. cor. between Secs. 22 and 27, Tp. 14 N., Rg. 6 E., in the Town of Lake City, Ark., and fully described in the field notes of the survey of Cane Island, in said Township and the testing of said meridian, on Dec. 19<sup>th</sup>, 1909, and described in the field notes of the survey of the Sunken lands of the St. Francis River, Ark., in Tp. 14 N., Rg. 6 E., I set off  $35^{\circ} 50' N.$  on the lat. arc;  $0^{\circ} 31\frac{1}{2}' N.$  on the declination arc; and at 8 h. 52 $\frac{1}{2}$  m. t., determine with the solar a meridian and find that this line falls 0.2 ins. west of the Polaris Meridian.

At 11 h. 52 $\frac{1}{2}$  m. A. M., 1 m. t., I set off  $0^{\circ} 7' N.$  on the decl. arc; and observe the sun on the meridian; the resulting lat. is  $35^{\circ} 50' N.$  the true latitude.

At 3 h. 52 $\frac{1}{2}$  m. p. m., 1 m. t., I set off  $35^{\circ} 50' N.$  on the lat. arc;  $0^{\circ} 11\frac{1}{2}' N.$  on the decl. arc; and find that the meridian line determined with the solar agrees with the Polaris Meridian. The solar apparatus by a. m. and p. m. observations, defines positions for meridians, respectively about  $0' 16''$  west and  $0' 0''$  of the meridian established by the Polaris observation; therefore, I conclude that the adjustments of the instrument are satisfactory.

The magnetic bearings of the true meridian at 9 h. 30 m. a. m., is  $N. 5^{\circ} 07' W.$ ; the angle thus determined gives the mag. decl.  $5^{\circ} 07' East$ .

Before commencing this survey, I compared my working tape with the Standard tape furnished me by the Department, and found to be the correct length.

#### Retracements.

Commencing at the corner of Secs. 35 and 36, on the south boundary of Tp. 12 N., Rg. 9 E., which is a piece of an iron R. R. rail, set in the ground and shown to me as the cor., and run  $N. 0^{\circ} 10' W.$  between secs. 35 and 36.

Over level land. Along lane. Fields both sides.

Intersect an iron R. R. rail, set in the ground, for the  $\frac{1}{4}$  sec. cor. Old bearing trees gone.

#### Moon Lake.

Township No. 12 N., of Range No. 9 East of the 5th Prin. Mer.

Chains. From this  $\frac{1}{4}$  sec. cor., I run  $N. 0^{\circ} 2' E.$  on a true line bet. secs. 35 and 36.

- 3.00 Center of the Wilson Northern R. R. track, bears nearly north and curves to the S. E.
- 9.50 House, bears west 1 ch.
- 18.20 Bears west, 1.50 chs., house.
- 20.75 House, bears west, 2 chs.
- 38.25 House, bears west, 2.50 chs.
- 39.00 House, bears east, 2 chs.
- 40.00 Intersect an iron R. R. rail, set for cor. of secs. 25, 26, 35, 36. Old bearing trees gone.  
Land, level.  
Soil, 1st rate.
- 67 From this cor. sec. I run N.  $89^{\circ} 41'$  W. on a true line bet. secs. 26 and 35.  
Over level land.
- 0.16 Center of R. R. track, bears nearly N. and S.
- 1.00 Enter timber, north of line; field on south.
- 17.00 Cor. of fence 75 lks. S. and E. Enter timber on both sides.
- 40.01 Intersect a 2 inch ash post, 2 ft. in sight, not marked, from which an Elm tree, 26 ins. diam., bears N.  $15^{\circ} 00'$  W., 18 lks. dist. No marks.  
Thence N.  $89^{\circ} 55'$  W.
- 40.72 Intersect a point, from which an ash stump, 26 ins. dia. bears S.  $13^{\circ} 30'$  E., 15 lks. dist., and shows where old marks have been cut out. At the point I drive an ash post, 3 ft. long. 3 ins. sq. 2 ft. in the ground, for cor. to secs. 26, 27, 34 and 35, marked  
T. 12 N. S. 26 on N. E.,  
R. 9 E. S. 35 on S. E.,  
S. 34 on S. W., and  
S. 27 on N. W. faces, with 1 notch on S. and 2 on E. edges, from which an Elm tree, 14 ins. dia., bears S.  $62^{\circ} 00'$  W., 17 lks. dist., marked T. 12 N. R. 9 E. S. 34 B. T.  
Ash tree, 59 ins. dia., bears N.  $47^{\circ} 00'$  W., 10 lks. dist., marked T. 12 N. R. 9 E. S. 27 B. T.  
Ash tree, 16 ins. diam., bears N.  $21^{\circ} 00'$  E., 61 lks. dist., marked T. 12 N. R. 9 E. S. 26 B. T.  
Elm tree, 16 ins. diam., bears S.  $35^{\circ} 00'$  E., 69 lks. dist., marked T. 12 N. R. 9 E. S. 35 B. T.  
Land level.  
Soil, 1st rate.  
Timber: elm, oak, hackberry, ash, gum, maple, cottonwood, cypress, willow, locust, sassafrass, hickory, sycamore.  
Brush: elbow, brush, [*Vivip*] vines, Thorn and blackberry.

## Moon Lake.

Township No. 12 North of Range No. 9 East of the 5th Prin. Mer.

Chains. Commence at the cor. of secs. 35 and 26, hereinbefore described, on the S. bdy. of the township,

I run N.  $89^{\circ} 49'$  W. on a true line on the S. bdy. of the township.

Land level. Through timber.

40.00 Could find nothing.

80.26 Intersect an oak post, 3 ins. sq.  $1\frac{1}{2}$  ft. in sight, which is the cor. of secs. 34 and 35, on the south bdy. of sec. 35.

Land, level.

Soil, 1st rate.

Timber and brush, same as last mile.

From this cor. I run N.  $0^{\circ} 20'$  W. on a true line bet. secs. 34 and 35 over level land. Through timber and brush

40.00 Could find nothing.

80.13 Intersect post at cor. of secs. 26, 27, 34 and 35, hereinbefore described.

Land, level.

Soil, first rate.

Timber same as last mile.

From this cor., I run N.  $0^{\circ} 1'$  on a true line, bet. secs. 26 and 27.

Over level land Through timber and brush.

37.30 (Proportional Measurement) Set an iron post, 3 ft. long, 1 in. diam.,  $2\frac{1}{2}$  ft. in the ground, on the edge of Moon Lake (Sunk lands) for Meander cor. of frac. secs. 26 and 27, and marked on the brass cap of the post, T. 12 N. R. 9 E. S. 26 S. 27 M. C., from which a Locust tree, 12 ins. diam., bears S.  $66^{\circ} 20'$  E.,  $31\frac{1}{2}$  lks. dist., marked T. 12 N. R. 9 E. S. 26 M. C. B. T.

Ash tree, 12 ins. diam., bears N.  $48^{\circ} 50'$  E., 31 lks. dist., marked T. 12 N. R. 9 E. S. 26 M. C. B. T.

(Could not find any old bearing trees or post.)

Thence on a blank line.

65.18 (Proportional measurement) set an iron post, 3 ft. long, 1 in. diam.,  $2\frac{1}{2}$  ft. in the ground, on the edge of Moon Lake (Sunk lands), for Meander cor. of secs. 26 and 27, and mark on the brass cap, T. 12 N. R. 9 E. S. 26 S. 27 M. C. from which a Maple tree, 12 ins. diam. bears S.  $22^{\circ} 10'$  E., 67 lks. dist., marked T. 12 N. R. 9 E. S. 26 M. C. B. T.

Ash tree, 30 ins. diam., bears S.  $84^{\circ} 00'$  E., 29 lks. dist., marked T. 12 N. R. 9 E. S. 26 M. C. B. T.

79.59 Intersect a point from which an overcup oak tree, 30 ins., bears N.  $6^{\circ} 15'$  W., 14 lks. dist. (Marks rotted away) and a hole where ash tree had rotted away, bears S.  $34^{\circ} 30'$  E., 9 lks. dist., and at point.

Set an ash post, 3 ft. long, 3 ins. sq., 2 ft. in the ground, for cor. of secs. 22, 23, 26 and 27, marked T. 12 N. S. 23 on N. E., R. 9 E. S. 26 on S. E., S. 27 on S. W., and S. 22 on N. W. faces, with 2 notches on S. and E. edges, from which an Ash tree, 14 ins. diam., bears S.  $38^{\circ} 00'$  W., 42½ lks. dist. marked T. 12 N. R. 9 E. S. 27 B. T.

Ash tree, 14 ins. diam., bears S.  $34^{\circ} 00'$  E., 54 lks. dist., marked T. 12 N. R. 9 E. S. 26 B. T.

White oak tree, 24 ins. diam., bears N.  $20^{\circ} 00'$  E., 46 lks. dist. marked T. 12 N. R. 9 E. S. 23 B. T.

Maple tree, 10 ins. diam. bears N.  $44^{\circ} 00'$  W., 55½ lks. dist. marked T. 12 N. R. 9 E. S. 22 B. T.

Land, level.

Soil, 1st rate.

Timber and brush, same as on last mile.

From cor. of secs. 26, 27, 34 and 35.

I run.

S.  $89^{\circ} 17'$  W.

On a true line bet. secs. 27 and 34 over level land. Through timber and brush.

40.00

Found no post or bearing trees.

80.03

Intersect an oak post 2 ins. sq. 1 ft. in sight for cor. of secs. 27, 28, 33 and 34, from which a Spanish oak tree, 40 ins. diam., bears S.  $12^{\circ} 30'$  E., 17 lks. dist., marked T. 12 N. R. 9 E. S. 34 B. T. and a depression where a tree has rotted, bears N.  $43^{\circ} 30'$  W., 6 lks. dist. land, level.

70

Soil, 1st rate.

Timber and brush, same as in last mile.

From this cor. I run.

N.  $89^{\circ} 46'$  W. on a true line bet. secs. 28 and 33 over level land.

Through timber and brush.

40.00

Intersect an oak post, 3 ins. sq. 2 ft. in sight, not marked, for ¼ sec. cor., from which a hackberry tree, 22 ins. diam., bears N.  $49^{\circ} 00'$  W. 11½ lks. dist. (Marks on both of these trees have been cut out, but the inside of the trees have rotted, so that they cannot be read.)

Chains.

From the ¼ sec. cor. I run N.  $89^{\circ} 46'$  W. on a true line bet. secs. 28 and 33.

9.00

No corner or bearing trees but dist. come on bank of old bayou, bearing S. Dredged ditch, just W.

Land, level.

Soil, 1st rate.

Timber and brush, same as on last mile.

From cor. of secs. 27, 28, 33 and 34, I run N.  $0^{\circ} 13'$  W. on a true line bet. secs. 27 and 28.

Land level. Through timber and brush.

34.80

Bank of Bayou bears N. W. 95 lks. across.

40.00

Found nothing.

55.55

Bank of bayou, bears S. W.

- 55.85 Edge of dredged ditch, bears S. W.  
 57.00 Opposite edge.  
 58.00 Opposite bank of bayou.  
 80.12 Intersect an ash post 3 ins. sq., 2 ft. in sight, for cor. of secs. 21, 22, 27 and 28, from which, depressions where trees have been, bears N.  $29^{\circ} 45'$  W., 24 lks. dist., and S.  $70^{\circ} 30'$  E., 36 lks. dist.
- 71 I marked stake as follows:  
 T. 12 N. S. 22 on N. E.,  
 R. 9 E. S. 27 on S. E.,  
 S. 28 on S. W. and  
 S. 21 on N. W. faces with 2 notches on S. and 3 on E. edges from which a Gum tree, 14 ins. diam., bears N.  $73^{\circ} 00'$  E., 7 lks. dist., marked T. 12 N. R. 9 E. S. 22 B. T.  
 Maple tree, 14 ins. diam., bears N.  $70^{\circ} 00'$  W., 27 lks. [disr.,] marked T. 12 N. R. 9 E. S. 21 B. T.  
 Gum tree, 14 ins. diam., bears S.  $52^{\circ} 15'$  E., 39 lks. dist. marked T. 12 N. R. 9 E. S. 27 B. T.  
 Elm tree 12 ins. diam., bears S.  $46^{\circ} 00'$  W., 32 lks. dist., marked T. 12 N. R. 9 E. S. 28 B. T.  
 Land, level.  
 Soil, 1st rate.  
 Timber and brush, same as on last mile.  
 From cor. of secs. 22, 23, 26 and 27 I run S.  $89^{\circ} 47'$  W. on a true line bet. secs. 22 and 27.  
 Over level land. Through timber and brush.
- 4.30 (Proportional measurement.) Set an iron post, 3 ft. long, 1 in. diam.,  $2\frac{1}{2}$  ft. in the ground for Meander cor. of frac. secs. 22 and 27, on the edge of Moon Lake (Sunk Lands), and mark on the brass cap, T. 12 N. R. 9 E. S. 22 27 M. C. from which an Ash tree, 12 ins. diam. bears N.  $55^{\circ} 00'$  E., 45 lks. dist., marked T. 12 N. R. 9 E. S. 22 M. C. B. T.
- Chains. Maple tree, 16 ins. diam., bears N.  $1^{\circ} 00'$  E.,  $3\frac{1}{2}$  lks. dist., marked T. 12 N. R. 9 E. S. 22 M. C. B. T.  
 Thence on a blank line.  
 (Proportional measurement.)
- 71.39 Set an iron post 3 ft. long 1 in. diam.,  $2\frac{1}{2}$  ft. in the ground for meander cor. of frac. secs. 22 and 27 on the west side of Moon Lake (sunk lands), and marked on the brass cap.  
 T. 12 N. R. 9 E. S. 22 S. 27 M. C. from which a Hackberry tree, 30 ins. diam., bears N.  $62^{\circ} 30'$  W., 45 lks. dist., marked T. 12 N. R. 9 E. S. 22 M. C. B. T.  
 Elm tree, 8 ins. diam., bears S.  $5^{\circ} 00'$  E., 35 lks. dist., marked T. 12 N. R. 9 E. S. 27 M. C. B. T.
- 72
- 74.45 Edge of dredged ditch, bears S. W.  
 75.35 Other edge.  
 80.30 Intersect the post at cor. of secs. 21, 22, 27 and 28 herein described.

Land, level. Soil, 1st rate. Timber and brush same as in the last mile.

From this cor. I run, N.  $89^{\circ} 50'$  on a true line bet. secs. 21 and 28 over level land. Through timber and brush.

39.95 Intersect a post painted red, presumed to be the  $\frac{1}{4}$  sec. cor.

47.91 Left bank of bayou, course S.

49.29 Edge of water in dredged ditch, flows S. Land, level. Soil 1st rate. Timber and brush, same as in the last mile.

From cor. of secs. 22, 23, 26 and 27, I run N.  $0^{\circ} 18'$  W. on a true line bet. sec. 22 and 23 over level land. Through timber and brush.

34.46 Edge of water in dredged ditch, course nearly west.

35.09 Leave water.

39.93 Intersect a wooden post 2 ins. sq. 4 ft. in sight, from which a Willow tree, 20 ins. diam., bears S.  $37^{\circ} 30'$  E., 36 lks. dist., with a large blaze toward the post, rotted.

72.61 Center of Spur of railroad, bears S.  $89^{\circ} 15'$  W., since taken up and removed.

80.13 Intersect a point for cor. of secs. 14, 15, 22 and 23, from which a large ash stump, with old blaze, bears N.  $34^{\circ} 30'$  W., 17 lks. dist. Land, level. Soil, 1st rate. Timber and brush, same as in the last mile.

From cor. of secs. 21, 22, 27 and 28, I run N.  $0^{\circ} 1'$  E. on a true line, bet. secs. 21 and 22 over level land. Through timber and brush.

39.92 Intersect a wooden post, 4 ins. sq. 2 ft. in sight for  $\frac{1}{4}$  sec. cor. No old bearing trees could I find.

63.55 Intersect a wooden post, 5 ins. sq. 2 ft. above ground, for meander cor. of frac. secs. 21 and 22, from which a Box elder tree, 24 ins. diam., bears S.  $10^{\circ} 30'$  E., 16 lks. dist.

64.44 Edge of water in dredged ditch, course S. W.

73

66.00 Opposite edge of water.

80.18 Intersect a wooden post, 4 ins. sq. 2 ft. in sight, for cor. of secs. 15, 16, 21 and 22, from which an Ash tree, 24 ins. diam., bears N.  $4^{\circ} 00'$  E., 24 lks. dist. with an old blaze on S. W. side. From this tree is a hole, where a tree has decayed, S. W. 24 lks. dist. Land, level. Soil, 1st rate. Timber and brush, same as in the last mile.

From this post I run N.  $89^{\circ} 49'$  E. on a true line bet. Secs. 15 and 22 over level land. Through timber and brush.

3.26 Edge of right bank of Bayou course S.

3.61 Edge of water in dredged ditch, course S. 6 ft. deep.

4.91 Opposite edge of water.

40.00 Could not find any evidence of a  $\frac{1}{4}$  sec. cor.

79.84 Intersect point for cor. of secs. 14, 15, 22 and 23, hereinbefore described. Land, level. Soil, 1st rate. Timber and brush, same as on the last mile.

## Meander of Moon Lake.

I commenced at the meander cor of frac. secs. 22 and 27 on the E. side of Moon Lake, hereinbefore desc. Thence I run in sec. 27. Through timber and brush. S.  $13^{\circ} 00'$  E. 2.10 chs. set ash post for angle point S.  $17^{\circ} 00'$  E. 13.00 chs. to the meander cor. of frac. secs. 26 and 27.

Thence in sec. 26.

Through timber and brush.

S.  $42^{\circ} 15'$  E. 5.56 chs. Set ash post for angle point.

S.  $43^{\circ} 15'$  E. 10.00 chs. Set ash post for angle point.

South 5.82 chs. Set ash post for angle point.

S.  $45^{\circ} 00'$  W. 15.00 chs. to the meander cor. of frac. secs. 26 and 27.

Land, level. \*

Soil, 1st rate.

Timber and brush, as hereinbefore desc.

Chains.

Thence in sec. 27.

Through timber and brush.

S.  $15^{\circ} 45'$  W. 7.73 chs. Set ash post for angle point.

S.  $51^{\circ} 00'$  W. 6.00 chs. set ash post, for angle point.

S.  $70^{\circ} 00'$  W. 12.00 chs. set ash post, for angle point.

74

West 19.66 chs.

No.  $73^{\circ} 45'$  W. 10.00 chs. set ash post, for angle point.

N.  $51^{\circ} 30'$  W. 5.00 chs. set ash post, for angle point.

N.  $32^{\circ} 00'$  W. 22.27 chs. set ash post, for angle point.

N.  $12^{\circ} 15'$  W. 15.85 chs. set ash post, for angle point.

N.  $15^{\circ} 30'$  W. 17.45 chs. set ash post, for angle point. to the meander cor. of frac. secs. 22 and 27.

Land, level.

Soil, 1st rate.

Timber and brush, as hereinbefore described.

Thence in sec. 22.

Through timber and brush.

N.  $28^{\circ} 30'$  E. 9.00 chs. To mouth of bayou on edge of dredged ditch, which is 50 lks. across; set ash post, for angle point.

N.  $38^{\circ} 00'$  W. 5.44 chs. to opposite side of the mouth of bayou, and set ash post, for angle point.

North 3.30 chs. set ash post, for angle point.

N.  $25^{\circ} 00'$  W. 12 chs. set ash post, for angle point.

N. 10° 30' W. 15.00 chs.	set ash post, for angle point.
North 12.00 chs.	set ash post, for angle point.
N. 20° 00' E. 3.00 chs.	set ash post, for angle point.
N. 50° 00' E. 15.00 chs.	set ash post, for angle point.
N. 74° 30' E. 18.00 chs.	set ash post, for angle point.
N. 81° 30' E. 20.00 chs.	set ash post, for angle point.
East 18.00 chs.	set ash post, for angle point.
S. 50° 00' E. 5.50 chs.	set ash post, for angle point.
S. 25° 00' E. 5.00 chs.	set ash post, for angle point.
South 65.00 chs.	to the meander cor. of frac. secs. 22 and 27, hereinbefore described.

Land, level.

Soil, 1st rate.

Timber and brush, same as described hereinbefore.

Subdivisional lines through Moon Lake. Commence at the meander corner of frac. secs. 26 and 27 hereinbefore described, which is 37.30 chs., N. 0° 1' W. of the cor. of secs. 26, 27, 34 and 35, hereinbefore described, and run N. 0° 1' W.

75 On a true line bet. secs. 26 and 27 over level land.

Through timber and brush.

2.50 Set an iron post, 3 ft. long 1 in. diam., 2½ ft. in the ground, for ¼ sec. cor. and mark on the brass cap ¼ sec. S. 27 on W. half, and

S. 28 on the E. Half; from which an ash tree, 20 ins. diam., bears S. 36° 15' E., 53 lks. dist. marked ¼ S. 26 B. T.

Ash tree, 12 ins. diam., bears N. 40° 00' W., 21 lks. dist. marked ¼ S. 27 B. T.

27.88 Intersect the Meander cor. of frac. secs. 26 and 27, hereinbefore described.

Land, level.

Soil, 1st rate.

Timber and brush, same as before described.

Commence at the Meander cor. of frac. secs. 22 and 27, hereinbefore described, which is 4.30 chs., S. 89° 47' W. of the cor. of secs. 22, 23, 26 and 27, hereinbefore described, and run S. 89° 47' W. on a true line bet. secs. 22 and 27 over level land. Through timber and brush.

35.85 Set an iron post, 3 ft. long, 1 in. diam., 2½ ft. in the ground for the ¼ sec. cor., and mark on the brass cap ¼ S. 22 on N. and S. 27 on S. half; from which a Locust tree, 12 ins. Diam., bears S. 29° 00' W., 40 lks. dist., marked ¼ S. 27 B. T.

Ash tree, 18 ins. diam., bears N. 57° 30' W., 49 lks. dist., marked ¼ S. 22 B. T.

67.09 Intersect the meander cor. of frac. secs. 22 and 27, hereinbefore desc.

(At 55.70 chs. on this course and 2.00 chs. south is a log cabin, partly built.)



Land, level.

Soil, 1st rate.

Timber and brush, same as heretofore described.

Lake City, April 9th, 1910.

EDWIN H. VAN ANTWERP,

*Examiner of Surveys.*

*General Description.*

The land covered by this survey, is level and on the same elevation or higher than the surrounding lands. There is a slight depression around parts of the edge of the lake, which appears to have been a slough, which is about one to two chains across.

The whole tract is covered with fine trees of ash, elm, various kinds of oak, hackberry, maple, cottonwood, cypress, willow, locust, sassafrass, hickory and sycamore also brush consisting of elbow brush, privy, vines, thorn and blackberry.

Endorsed: Filed in the District Court, December 13, 1913.

PLAINTIFF'S EXHIBIT "X."

Commissioner of State Lands, State of Arkansas, Little Rock.

Reuben G. Dye, Commissioner.

William B. Owen, Deputy.

*Certificate.*

This is to certify, that the records of the State Land Office show that the Frl. Sec. 22 T. 12 N. R. 9 E., 164.12 acres was entered as Swamp and Overflowed land by William B. Waldron, February 24th, 1858, that the patent issued to William B. Waldron, Sept. 12th, 1859.

The said records also show that the Frl. Section 26 T. 12 N. R. 9 E., 623.83 acres was entered as Swamp and Overflowed land by William B. Waldron, July 30th, 1855, that the patent issued to William B. Waldron, July 14th, 1859.

The said records also show that Frl. Section 27 T. 12 N. R. 9 E., 291.98 acres was entered by William B. Waldron, as Swamp and Overflowed land May 12th, 1857, that the patent issued to William B. Waldron, July 16th, 1859.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of my office, in Little Rock, Arkansas, this the 10th day of July, A. D. 1913.

[SEAL.]

R. G. DYE,

*Commissioner of State Lands,*

By W. B. OWEN,

*Deputy Commissioner.*

## 77 PLAINTIFF'S EXHIBIT "Z."

WEST MEMPHIS, ARK., June 25th, 1895.

To the Honorable Hoke Smith, Secretary of the Interior, Washington, D. C.

SIR: We herewith enclose a statement from the Chief Engineer of the Levee District with reference to the drainage of the same. You will readily understand the necessity of this drainage to our levee system, and will appreciate the great advantage it will be to this district by removing the cause of Malaria, by making public roads possible, [be] enlarging the area of arable lands and otherwise.

We therefore make no argument in the case, but earnestly, though respectfully ask that you have the survey made in such times as will make it available for use before the next session of Congress.

The citizens of this whole community will greatly appreciate your favorable action in this matter.

Very respectfully, your obedient servant,  
(Signed)

HUGH McVEIGH,  
*Sec'y of St. F. L. B.*

"By order of the President."

(9130)

Endorsed: Filed in the District Court, December 13, 1913.

## PLAINTIFF'S EXHIBIT "AA."

OFFICE OF ST. FRANCIS LEVEE BOARD,  
WEST MEMPHIS, ARK., June 25th, 1894.

To the Honorable Hoke Smith, Secretary of the Interior, Washington, D. C.

SIR: As requested by the President of the Board of Directors of the St. Francis Levee District, I respectfully submit certain facts as to the St. Francis basin—

That basin has an area of (6,090) six thousand and ninety square miles, extending from Commerce, Missouri, to the mouth of the St. Francis River in Arkansas, about two hundred miles in length with an average width of thirty miles. The Mississippi River bounds the basin on the East while the St. Francis River and its tributary, Little River, lies along or near its western border—

The surface of this basin inclines from the bank of the Mississippi river westward to the St. Francis, and as a rule the drainage of the whole basin is in that direction—

The citizens of that territory are organized into two Levee Districts, one in the State of Missouri, and the other in the State of Arkansas, and are now engaged in building a levee along the front of that basin to protect it from overflow from the Mississippi River—

At the time that territory was surveyed and sectioned by the Government, there was a considerable part of the whole occupied by lakes and swamps which was not surveyed, that is, they were mean-

dered, which means that they were not surveyed in, but surveyed out—

The numerous overflows since then have filled up these lakes and swamps very much and changed largely the general features of the country. To such an extent has this filling up been done, that the areas and depths of these lakes and swamps have been very much reduced and around their margins forests of large timber now stand on space then occupied by water— This filling up increases the possibility of drainage, and recent cross sections of that basin show that the whole can be drained into the St. Francis and Little Rivers—

This drainage is indispensable to the maintenance of the levee, because at a low water stage of the Mississippi River, the [sipage] from these inland reservoirs is to the river and in such volumes that it carries out into the river the stratum of sand through which it percolates, undermining the banks, causing them to "cave off" very fast, and of course the nearer the reservoirs are to the river, the greater are the results of the [sipage]—

There is a chain of these lakes lying near the river and following its course with considerable uniformity, the [sipage] from which is very destructive to the bank, and in locating the levee two considerations forced the location between these lakes and the river one, much the higher ground lay in front of the lakes, the other, a desire

to protect as far as possible the property of our citizens—  
79 To maintain that location these lakes must be drained and

the question which confronts us is, how can it be done? There is but one way which suggests itself to us, and that is, that the general government in which we are informed the title of these unsurveyed lands yet remains, donate these lands to the States, or to the Levee Board, to be expended in their drainage. This drainage is necessary not only to the protection of the levees, but to the development of the country and the health of the citizens—

We will ask Congress at its next session to donate these lands for that purpose. And it has been suggested that an accurate description of the lands asked for will be necessary—That would necessitate a survey—If that should be so held, it is a matter of much importance to the landowners and other citizens of that large territory, that the survey be made in time to make it available for use next winter.

I would respectfully suggest, as there has been no overflow this year, and these reservoirs are more nearly dry than usual, this would be a propitious time to make the survey.

I have the honor to be,

Very respectfully, your obt. servant,  
(Signed)

H. N. PHARR,  
*Chief Engineer, St. Francis Levee District.*

I endorse the within request and earnestly urge the department to take such steps as will accomplish the end desired.

(Signed)

P. D. McCULLOUGH,  
*M. C., 1st Ark. District.*

(16)

Endorsed: Filed in the District Court, December 13, 1913.

Paragraph 13, P. 1288 and 1289, Examiner's Transcript.

*Agreement, Arkansas Compromise.*

13. The sum of \$348,544.06, the same being for 278,835,248 acres of swamp lands in place and as a basis of land and cash indemnity at \$1.25 per acre. This sum is made up by the allowance of about one-fourth of the amount claimed by the State through its agent, Thomas G. Riley, who has listed 506,260 acres of lands, the same not yet being filed in the swamp division. Mr. Riley states in his affidavit (See Exhibit No. 10, p. 31) that he has not yet finished the examination of the field notes of the State, and that it is his opinion, from a careful estimate of the amount and character of the lands in the State, the field notes of which he has not yet examined, that there remained, over and above said lists of 506,260 acres, other swamp lands never yet listed or applied for to the amount of 400,000 acres, including about 50,000 acres of what are known as "sunk lands" heavily timbered and not yet surveyed. This claim of 906,260 acres, not having been formally asked for by filing the lists in the proper division, we are not prepared to admit, as a whole; but, on a careful examination into the merits of the same for the purpose of an equitable adjustment of the whole swamp-land claims of the State, we recommend, as above shown, the allowance of the claim to the extent above mentioned.

Endorsed: Filed in the District Court, December 13, 1913.

DEFENDANT'S EXHIBIT No. 6.

NOTE BY CLERK.—This Exhibit is not among the files, and the Clerk has no record of said Exhibit.

DEFENDANT'S EXHIBIT 7.

Township No. 12 North Range 9 East, District of Helena, now Little Rock, Ark.

Whole of Sec. 22, Township 12 N. Range 9. Selected as Swamp under act Sept. 28/50. Approved May 11, 1853.

Whole of Sec. 22, Township 12 N. Range 9 E. Selected as Swamp under act Sept. 28/50. Approved May 11, 1853.

Whole of Sec. 27, Township 12 N. Range 9 E. Selected as swamp under act Sept. 28/50/ Approved May 11, 1853.

(Notation of homestead entries allowed in above sections on and after June 16, 1910, not copied here as this statement purports to show only such notations as were made previous to June 16, 1910.)

Endorsed: Filed in the District Court, December 13, 1913.

## DEFENDANT'S EXHIBIT 9.

Refer in reply to this initial: K SWS.

CCN. E. M. JWB.

Department of the Interior,  
General Land Office.

WASHINGTON, D. C., November 25, 1898.

81 Address only the Commissioner of the General Land Office,  
Register and Receiver, U. S. Land Office, Little Rock, Arkansas.

SIRS: Section 1 of the act of Congress approved April 29, 1898 (Statutes, 2d Sess. 55th Cong. p. 367) approves the compromise and settlement made by the Secretary of the Treasury and the Secretary of the Interior, on the part of the United States, and the Governor of Arkansas, on the part of the State. One of the provisions of said compromise is that "the parties hereto agree that the land "now patented, approved, or confirmed to the State of Arkansas under the acts of September 22, 1850, March 2, 1855, and March 3, 1857, shall constitute the full measure due the State under the swamp-land acts," except certain lands which had been approved but not patented and certain other lands which were confirmed but not patented.

Section 3 of said act of April 29, 1898, confirms to persons holding deeds from the State certain swamp-lands so deeded, without [further] payment to the State or to the United States, and by Section 4 of the act the State of Arkansas relinquishes and quit-claims to the United States all lands heretofore confirmed, certified or patented to the State which have been entered under the public land laws, and also cedes all right, title and interest, under the swamp-land laws, in and to any lands which have been heretofore granted, confirmed, certified or patented by the United States under any other acts, and the title to such lands is confirmed to such grantees, their heirs, successors or assigns.

The tracts of land described below have been selected and reported to this office on various dates, as inuring to the State under the swamp-land laws. None of these tracts come within the exceptions mentioned above: i. e. none of them have been approved or confirmed to the State, or if so they have been disposed of by the United States, nor have any of them been reported to this office by the State authorities as having been deeded by the State to individuals.

In view of the provisions of the act of Congress above referred to and in order to clear the records of this office and of your office of such selections, it is decided that the claim of the State, under  
82 the swamp-land laws, of record, to the tracts of land herein described, is relinquished and settled by said act and you will so note on the records of your office and advise the state authorities accordingly.

Description.	Sec.	T.	R.	How Disposed of by U. S.
All of	16	12	9	School land.

Very respectfully,

BINGER HERMAN,  
*Commissioner.*

Endorsed: Filed in the District Court, December 13, 1913.

## DEFENDANT'S EXHIBIT 12.

General Land Office.

November 21, 1850.

SIR: By the Act of Congress entitled "An act to enable the State of Arkansas and other states, to reclaim the 'Swamp lands,' within their limits," approved September 28, 1850, it is directed "That to enable the State of Arkansas, to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made thereby unfit for cultivation, which shall remain unsold at the passage of this act shall be and the same are hereby granted to said State."

1st. By the 4th section of this act, it is directed, that the provisions of it shall be extended to and their benefits be conferred upon each of the other states of the Union, in which such swamp and overflowed lands may be situated.

2d. And "that in making out a list and plats of the lands aforesaid, all legal subdivisions, the greater part of which is 'wet and unfit for cultivation' shall be included in said list and plats; but when the greater part of a sub-division is not of that character, the whole of it shall be excluded therefrom."

This act clearly and unequivocally grants to the several states, those lands which from being swampy or subject to overflow, are unfit for cultivation; in this class is included also all lands which, though dry part of the year, are subject to inundation at the planting, growing or harvesting season, so as to destroy the crop, and therefore are unfit for cultivation taking the average of the seasons, for a reasonable number of years as the rule of determination.

83 You will please make out a list of all the lands thus granted to the state, designating those which have been sold or otherwise disposed of since the passage of the law and the price paid for them when purchased.

The only reliable data in your possession from which these lists can be made out, are the field notes of the surveys on file in your office; and if the authorities of the state are willing to adopt these as the basis of those lists, you will so regard them. If not, and those authorities furnish you satisfactory evidence, that any lands are of the character embraced by the grant, you will so report them.

The following general principals will govern you, in making up these lists, to-wit:

When the field notes are the basis and the intersections of the lines of swamp or overflow with those of the public surveys alone are given, those intersections may be connected by straight lines, and all legal sub-divisions the greater part of which are shown by these lines to be within the swamp or overflow will be certified to the State, the balance will remain the property of the Government.

Where the state authorities may conclude to have the surveys made to determine the boundaries of the swamp or overflowed lands, those

boundaries alone should be surveyed, taking connections with the nearest section or township corners; or

Where the swamp or overflowed lands are on the borders of a stream or lake, the stream or lake could be meandered and ordinates surveyed at suitable intervals, from the borders of the stream or lake to the margin of the swamp or overflowed lands, and by connecting the ends of those ordinates, next to that margin by straight lines, the boundaries of the swamp or overflowed lands can be ascertained with sufficient accuracy. In no case, however, should any such boundaries or ordinates be marked in the field, as they may produce difficulty in determining the lines and corners of the public surveys hereafter and thus lead to litigation. The selections in all these cases will be made as before directed. Where satisfactory evidence is produced, that the whole of a township, or of any particular and specified part of a township, or the whole of a tract of country bounded by specified surveyed or natural boundaries, is of the character embraced by the grant, you will so report it. The adjacent subdivisions however to

84 be subject to the regulations above given; and in every case under each rule or principle herein prescribed forty acre lots or quarter sections will be regarded as the legal subdivisions contemplated by the law.

The affidavits of the county surveyors and other respectable persons that they understand and have examined the lines, and that the lands bounded by lines thus examined and particularly designated in the affidavit, are of the character embraced by the law, should be sufficient.

The line or boundary of the overflow, that renders the land unfit for regular cultivation may be adopted as that which regulates the grant.

You will make out lists of these lands as early as practicable according to the following form, one copy of which you will transmit to the land officers and another to this office. The lands selected should be reserved from sale, and after those selections are approved by the Secretary of the Interior, the Register should enter all the lands so selected in his tract books as "granted to the State by act of 28th September, 1850, being swamp or overflowed lands," and on the plats enter on each tract "State act 28th September, 1850." Copies of the approved lists will be sent to the Registers for this purpose. Your early attention is requested in this matter that the grant be disposed of as speedily as possible.

Very respectfully, your obedient servant,

(Signed)

J. BUTTERFIELD,

*Commissioner.*

Part of Section.	Section.	Township.	Range.	Remarks.
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The above instructions were sent to each Surveyor-General of the United States—and also a copy thereof to each Governor of the several land states—see pages 54 & 55.

## General Land Office.

Nov. 21st, 1850.

To the Governor of Mississippi, Ohio, Indiana, Alabama.

SIR: I have the honor to enclose you a copy of the instructions this day sent to the Land Officers of your State, for the selection of the Swamp and Overflowed Lands to which the State will be entitled by the Act of 28th September, 1850.

85 You will perceive that by those instructions the Land Officers are authorized to receive such reliable evidence of the character of any of those lands as may be presented by the authorities of the State; and as many of the lands, were probably surveyed at dry seasons, and hence not represented by the descriptive notes or plats as being of that character, I have supposed that it may be a matter of sufficient importance to induce you to call upon the county surveyors, or other respectable persons of your state, for a statement; under oath, of the swamp or overflowed lands in their respective counties.

Such testimony you perceive will be regarded as establishing the facts in the case, and on receipt of the reports of the Land Officers lists of the lands will be prepared as required by the act, submitted for the approval of the Secretary of the Interior, and plats and patents for the land thus approved will at once be prepared and forwarded to you.

With great respect,  
Your Ob't Serv't,

J. BUTTERFIELD,  
*Commissioner.*

See page 11.

Endorsed: Filed in the District Court, December 13, 1913.

## DEFENDANT'S EXHIBIT 13.

State of Arkansas, Executive Office.

LITTLE ROCK, March 31st, 1885.

Hon. L. Q. C. Lamar, Secretary of the Interior, Washington, D. C.

SIR: I have the honor to transmit herewith, a duly certified and authentic copy of, "An Act to better facilitate the adjustment of the differences between the State of Arkansas and the United States, arising under the grant by the United States to the State of Swamp and Over-flowed lands, under the act of Congress, approved Sept. 28th, 1850," approved March 17, 1885.

The state has from time to time made ample provision for the protection of the rights of settlers upon any of these lands so that such claims cannot be impaired or abridged in any manner. I respect-



86 fully request your acceptance of, and consent, on the part of the United States, to the proposal of the State therein made, and that I may be informed thereof at your early convenience. I have the honor to be with great respect,  
Your Ob't Serv't,

SIMON P. HUGHES,  
*Governor of the State of Ark.*

Endorsed: Filed in the District Court on December 13, 1913.

#### DEFENDANT'S EXHIBIT 14.

Department of the Interior, Washington.

To His Excellency Simon P. Hughes, Governor of the State of Arkansas.

SIR: In reply to your communication of the 31st of March, 1885, enclosing a copy of the Act of the Arkansas Legislature with reference to the adjustment of swamp lands in the borders of the State of Arkansas, approved March 17th, 1885, I have the honor to reply that I cannot accept the mode of adjustment provided for in the Bill.

I submitted yours to the Commissioner of the Land Office for report thereof, and herewith enclose a copy of his report.

From the provisions of the Bill and the facts, as shown by the records of the Land Office, it would seem that the mode of adjustment suggested would leave the subject involved in substantially the same difficulties that now exist. I would call your attention to the mode of adjustment adopted with reference to the states of Ohio, Michigan, Minnesota, Mississippi, Alabama and Wisconsin, as shown by the report of the Commissioner of the Land Office, and respectfully suggest for your consideration, whether that basis would be acceptable to the State of Arkansas.

I have, Sir, the honor to be, with great respect,

Yours truly,

L. Q. C. LAMAR, *Secretary.*

August 15, 1885.

Endorsed: Filed in the District Court on December 13, 1913.

#### DEFENDANT'S EXHIBIT 15.

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, August 28, 1885.

R. V. Yeakle, Esq., Agent for the State of Arkansas.

SIR: In reply to your communication of the 21st instant to this Department, relative to the claim of the State of Arkansas against the United States for certain swamp lands located within said States, while it may be possible that the facts set forth in your letter render the objectionable provisions of the Act passed by the legislature of

Arkansas immaterial and unimportant, yet, as they seem to be conditions or qualifications of the Governor's power to act in the case, they could not be waived.

Such being the case, and believing that the field notes of survey as found in the General Land Office constitute the just basis for determining the character of the land claimed by the State, I must adhere to the mode of adjustment laid down in my letter to His Excellency, Simon P. Hughes, Governor, dated the 15th instant.

This Department will afford the Agent of the State of Arkansas full facilities for examining the field notes of survey relating to these lands, so that on amendment of the Act passed by the legislature of Arkansas, the adjustment can be speedily and satisfactorily made.

Very respectfully,

L. Q. C. LAMAR, *Secretary.*  
G. A. J.

.5960.

Endorsed: Filed in the District Court on December 13, 1913.

#### DEFENDANT'S EXHIBIT 16.

K. DEPARTMENT OF THE INTERIOR,  
S. R. E. D. T. P. GENERAL LAND OFFICE,  
WASHINGTON, D. C., March 27, 1886.

Hon. S. J. Landes, House of Representatives.

SIR: Referring to your oral request for an opinion on the Bill (H. R. 131) "for the adjustment of the claim of the State of  
88 Arkansas against the United States," which provides for a commission to adjust the claims of said State under the several Acts of Congress relating to swamp and overflowed lands, I have to say that by the decisions of the Hon. Secretary of the Interior dated Aug. 15" and 28", 1885, said State was allowed to adopt the field notes of the public surveys as the basis for adjustment of her claims under said acts. This plan was accepted by the State authorities, and on Feb'y 18, 1886, the Governor informed the Department that an agent of the State had been appointed to examine the field notes and present her claims for adjustment, and said agent is now making such examination.

In view of these facts, I am of the opinion that no further legislation is necessary.

Very respectfully,

WM. A. J. SPARKS,  
*Commissioner.*

Endorsed: Filed in the District Court on December 13, 1913.

## DEFENDANT'S EXHIBIT 17.

In reply please refer to "E" J. H. B. 81022-1894. Address only the Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR, J. V. W. F. F.  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., August 25, 1894.

Commissioner of the General Land Office.

The Honorable The Secretary of the Interior.

SIR: I am in receipt, by your reference of July 24, 1894, for report in duplicate and return of papers, of a letter addressed to you dated June 25, 1894, from the Secretary of St. Francis Levee Board transmitting one from H. N. Pharr, Chief Engineer of the St. Francis Levee District, of even date, in which he states that the St. Francis Basin has an area of 6,000 square miles extending from Commerce, Missouri, to the mouth of the St. Francis River in Arkansas, about 200 miles in length, with an average width of 30 miles; that the Mississippi River bounds the basin on the east while the St. Francis

89 River and its tributary, Little River, lies along or near its western border; that the surface of the basin inclines from the back of the Mississippi, westward to the St. Francis, and as a rule the drainage of the whole basin is in that direction.

That the citizens of that territory are organized into two levee districts, one in the State of Missouri, and the other in the State of Arkansas, and are now engaged in building a levee along the front of that basin to protect it from overflow by the Mississippi River; that at the time the territory was surveyed and sectionized by the Government, there was a considerable part of the whole occupied by lakes and swamps "which were not surveyed, that "is they were meandered, which means that they were not surveyed in "but surveyed out."

That the numerous overflows since then have filled up those lakes and swamps very much and changed largely the general features of the country to such an extent that the areas and depths of the lakes and swamps have been very much reduced, and around their margins forests of large timber now stand on space then occupied by water; that the filling up increases the possibilities of drainage, and recent cross sections of that basin show that the whole can be drained into the St. Francis and Little Rivers.

That such drainage is indispensable to the maintenance of the levee &c., and that there is a chain of these lakes lying near the river following its course with considerable uniformity, the seepage from which is very destructive to the banks, "and in locating "the levee, two considerations forced the location between these "lakes and the river, one, much higher the ground lay in front of "the lakes, the other, a desire to protect, as far as possible, the "property of our citizens."

That to maintain that location, these lakes must be drained, and he asks how it can be done, suggesting that the General Government, in which he is informed that the title to "these unsurveyed" lands yet remains, donate these lands to the States, or to the "levee Boards to be expended in their drainage, "and that they will ask Congress at its next session to donate these lands for that purpose; that it has been suggested that an accurate description of the lands asked for would be necessary, which would necessitate a survey, and if that should be held, it is a matter of much importance to the land owners and other citizens of *the* that large territory that the survey be made in time to make it available for use next winter.

The letters appear to have been originally referred to the Department by Hon. P. D. McCullouch, House of Representatives, and subsequently forwarded to the War Department for consideration and action.

They were returned to this Department from the Secretary of War, who invites attention to the 4th endorsement thereon, by General C. B. Comstock, President of the Mississippi River Commission, to which the attention of this office is also directed by you. It reads as follows:

"The Miss. River Commission.  
President's Office.

NEW YORK, July 10, 1894.

Respectfully Returned to the Chief of Engineers.

The Mississippi River Commission has made an allotment of \$88,000, per year for each of the fiscal years, 1894, 1895, and 1896, for levees along the St. Francis front of the Mississippi River from New Madrid to the mouth of the St. Francis River, and if funds are hereafter supplied by legislation, will probably continue to make allotments for the same purpose.

The completion of the system of levees will greatly enhance the value of the lands behind them, and the question arises whether the United States should not retain all lands in the St. Francis basin which it now holds, with a view to finally selling them and thus partially reimbursing itself for its expenditures on levees on the St. Francis front, which will probably ultimately amount to some millions of dollars.

C. B. COMSTOCK,  
*Col. of Eng'rs Bvt. Brig. Gen. U. S. A.,*  
*President Miss. River Com'n."*

In reply, I have the honor to report on the subject in a general way, that under U. S. Supreme Court decisions, it is held by this office that when, in the extension of the lines of the public surveys a lake is meandered, its area is segregated from the public domain, and beds of inland non-navigable meandered lakes, or lands uncovered by their recession of waters of such lakes from natural or artificial causes, since the survey and disposition of the adjacent shore

land, do not belong to the United States but to the riparian owners. See U. S. Supreme Court decisions in the cases of *Hardin vs. Jordan* and *Mitchell vs. Smale*, 140 U. S., 371, 406; also Department decisions in the cases of *F. M. Pugh et al.*, 14 L. S., 274 and *Pruzynske vs. Winona and St. Peter R. R. Co.* *idem* 637.

91 In view of the foregoing I do not see that the Government has any authority to survey or dispose of the lake beds referred to in the letters transmitted by you for the purpose indicated therein.

The letters are returned herewith as directed.

Very respectfully,

EDW. A. BOWERS,  
*Acting Commissioner.*

Endorsed: Filed in the District Court on December 13, 1913.

#### DEFENDANT'S EXHIBIT 18.

In reply please refer to J. I. H. 7739-1894. Address only the Commissioner of the General Land Office.

E. F. B. F. L. C. G. C. R. G. C. R.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,  
WASHINGTON, D. C., November 30, 1894.

The Commissioner of the General Land Office.

SIR: On July 24, 1894, there was referred to your office for a report a communication, dated June 25, 1894, from the Secretary of St. Francis Levee Board, transmitting one from H. N. Pharr, Chief Engineer of the St. Francis Levee District, of even date, in which he gives the extent and approximate area of the St. Francis Basin—extending from Commerce Missouri, to the mouth of the St. Francis River—its situation, surroundings and character; levee districts in the basin, and the situation of the levees; also stating that numerous meandered lakes and swamps existed in said basin; the change in those lakes, their reductions in size and depth consequent upon the overflow of the Mississippi river, the possibilities and feasibility of draining those lakes, and the necessity therefor, to prevent the levees from injury by seepage from the lakes, etc.

Said letter assumes that the unsurveyed lands. (i. e., the lakes and swamps in the basin which were meandered by the public surveys) belong to the government, and that the only way to maintain the location of the levees is to drain the lakes. It was  
92 further stated that Congress would be asked at its next session to donate these lands for drainage purposes, and that such contemplated action by Congress would necessitate a survey of the lands; hence the survey was applied for.

On July 24, 1894, these communications were referred to your office, "for report in duplicate and return of papers, with expression of views," etc.

I am now in receipt of your office letter ("E") of August 25, 1894, in which you give it as your opinion that the government has no authority to survey or dispose of the lake beds referred to in said communication, citing as authority therefore the cases of *Hardin vs. Hordan* and *Mitchell vs. Small* (140 U. S., 371, 406), and departmental decision in re *F. M. Pugh et al.*, 14 L. D., 274, and *Pruszyński vs. Winona and St. Peter Railroad Company, Idem.*, 637.

Assuming that the lands, contiguous to and [surrounding] the meandered lakes, have long since been disposed of, it would seem, under the authorities cited, that the government has no jurisdiction over the same, and therefore no power to order or direct their survey. You will so advise the Secretary of the Levee Board.

The papers are herewith transmitted.

Very respectfully,

HOKE SMITH, *Secretary.*

Endorsed: Filed in the District Court, on December 13, 1913.

DEFENDANT'S EXHIBIT 19.

In reply please refer to

E.

J. E.

J. H. B.

102,247—1902.

Address only the Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

WASHINGTON, June 23, 1902.

Subject: Lands within the Area of a Meandered Lake.

Hon. James K. Jones, U. S. Senate.

SIR: I am in receipt of your letter dated June 17, 1902, inclosing one dated Blytheville, Mississippi County, Arkansas, 93 June 13, 1902, from Mr. C. L. Moore addressed to you, requesting information relative to obtaining title to certain lands within the area of Clear Lake in section 25, T. 13 N., R. 11 E., 5th P. M., Arkansas.

He states that at the time of the U. S. survey of said township the section was fractional and abutted upon the lake but that since that time the lake has "shrunk" so that a piece of land exists  $\frac{1}{2}$  a mile wide on one part and over  $\frac{1}{4}$  of a mile at narrowest part.

In reply I have the honor to state that the official plat shows said lake to have been duly meandered at the time of the subdivision surveys in the township and at that time covering parts of sections 23, 24, 25, 35 and 36.

When in the extension of the lines of the public surveys a lake

is so meandered its area is segregated from the public domain and the beds of such lakes or lands uncovered by the recession of the waters thereof since the survey and disposition of the adjacent lands are not regarded as public lands of the United States subject to survey and disposal as such and in this connection I respectfully invite attention to the U. S. Supreme Court decision in the case of *Hardin vs. Jordan*, 140 U. S., 371, where it is held (syllabus) that:

"Grants by the United States of its public lands bounded on streams and other waters, made without reservation or restriction, are to be construed, as to their effect, according to the law of the State in which the lands lie, "and that" by the common law, under a grant of lands bounded on a lake or pond which is not tide water and is not navigable the grantee takes to the centre of the lake or pond, ratably with other riparian proprietors if there be such."

The letter transmitted by you is returned herewith.

Very respectfully,

L. J.

BINGER HERMAN,  
*Commissioner.*

Endorsed: Filed in the District Court, on December 13, 1913.

PLAINTIFF'S EXHIBIT 20.

In reply please refer to,

1 Enc.

"E."

J. H. B.

94

J. H. B.

C. L. D. B.

9—102,287.

W. T. P.

Address only the Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,  
CENTRAL LAND OFFICE,  
WASHINGTON, October 9, 1909.

Alleged Unsurveyed Lands in Mississippi County, Arkansas.

Hon. R. B. Macon, Helena, Arkansas.

SIR: I am in receipt of your letter dated September 28, 1909, transmitting one dated Blitheville, Arkansas, September 26, 1909, addressed to you, from Mr. Herman Cross, requesting information to certain alleged unsurveyed lands described as being near Blytheville and Barfield, in Mississippi County, Arkansas.

In reply, I have the honor to state that the records in this office do not show that there are any unsurveyed public lands situated in

said county, and as your correspondent has not described the location of the particular lands he is interested in, with reference to the numbers of the township, range and section of the public surveys within which the same are situated, this office is unable to identify them upon the official plats of the survey of the townships embracing the same, to the end that their status may be determined from the records.

I will add, however, that if Mr. Cross refers to any unsurveyed lands bordering upon meandered lakes in said county, which have formed since the survey and disposition of the adjacent lands, the same are not regarded as public lands of the United States subject to survey and disposal as such, and in this connection I will invite attention to the U. S. Supreme Court decision in the case of *Hardin vs. Jordan* (140 U. S. 371).

I will also add that from correspondence on file here it is shown that certain lands within the area of Walker Lake in T. 16 N., R. 13 E., Mississippi County, Arkansas, formed the subject of a suit for a division of the lands, brought before the Supreme Court of Arkansas in the case of *Joanna Little vs. J. J. Williams et al.*, in which case, I am informed the court held that the lands belonged to the owners of the adjacent lands.

The letter from Mr. Cross transmitted by you is returned herewith.

Very Respectfully,

FRED DENNETT,

*Commissioner.*

Endorsed: Filed in the District Court, on December 13, 1913.

#### DEFENDANT'S EXHIBIT 21.

2460—1902.

W. V. D.

E. F. B.

S. V. P.

W. C. P.

DEPARTMENT OF THE INTERIOR.

WASHINGTON, November 17, 1902.

The Commissioner of the General Land Office.

SIR: The department is in receipt of your letter of June 2, 1902, relative to an alleged trespass upon what you term the unsurveyed lands in the northeastern part of Arkansas, known as the "sunk lands of the New Madrid earthquake."

The alleged trespassers are persons who claim to have purchased said lands from the board of directors of the "St. Francis Levee District," created and organized by the act of the Legislature of Arkansas of February 15, 1893, which fixed the boundaries of said district and empowered and made it the duty of said board to levy annually a tax on all lands in said levee district, to be assessed according to the increased value or betterment estimated to accrue from protection against floods from the Mississippi river by reason



of the construction of levees. At the same session the legislature of the state passed an act (March 29, 1893), donating to said district, for the purpose of building and maintaining levees, all the lands of the state lying within said district, except the sixteenth section, and all right, title or interest that the state had or might acquire to any lands within said district, except the sixteenth section, during the five years immediately after said act, by reason of forfeiture for taxes.

A special agent of your office states in his report that in an interview with the officers of said board he learned that it claimed title to the lands in question under said act of March 29, 1893, 96 and also bases its claim upon letters from your office and from the Secretary of the Interior, declaring in effect, that if the unsurveyed lands, known as the "sunk lands," were, at the date of the township surveys, covered by bodies of water and were afterwards uncovered by the recession of the waters, such lands would belong to the owners of the adjacent lands as riparian proprietors, and the United States would have no authority to survey and dispose of them, assuming that the lands contiguous to and surrounding the meandered waters have been disposed of. The special agent expresses the opinion that there is no doubt that at the time of the township survey these lands were simply covered of the overflow of the Mississippi river, and that they must be classed as agricultural lands, and not as covered by permanent bodies of water and therefore subject to State or riparian ownership; that "some of these lands are five miles wide and are covered with the finest timber, which is exceedingly valuable, and when cleared will make fine cotton and corn plantations and become some of the most valuable ones in the State." You recommend that steps be taken to enjoin the St. Francis Levee Board from disposing of any of said lands and that the purchasers of the lands from said board be enjoined from cutting any timber thereon.

The lands in question are in townships 11 to 16 N., inclusive, in range 6 E., and in townships 12 to 17 N., inclusive, in range 7 E., which were surveyed at different times from 1841 to 1849. The field notes and the plats of those surveys show that what are now reported to be unsurveyed lands were at the date of the township surveys covered by permanent bodies of water that were meandered as lakes and rivers, having a depth, as shown by the field notes, varying from 5 to 15 feet. A large portion of the surveyed lands lying along the meander lines are designated in the field notes as overflowed and unfit for cultivation.

The letter of your office and the letter of the Secretary of the Interior, referred to by the special agent as a basis of the claim of the levee board, were written in response to a communication from the chief engineer of the St. Francis Levee District, of June 25, 1894, to the Secretary of the Interior, in which, referring to the fact that the unsurveyed part of said townships consisted of lakes and swamps, he says:

The numerous overflows since then have filled up these lakes and swamps very much, and changed largely the general features of the

country. To such an extent has this filling up been done, that the areas and depths of these lakes and swamps have been very much reduced and around their margins forests of large timber now stand on space then occupied by water. This filling up increases the possibility of drainage, and recent cross sections of that basin show that the whole can be drained into the St. Francis and Little Rivers.

He stated that he was informed that the title to these unsurveyed lands yet remains in the government, and as the drainage of the lakes in the St. Francis basin is necessary to the maintenance of the levees, he suggested that the lands be donated to the State or the levee board for the purposes stated.

Said letter having been referred to your office, it was [states] in response thereto, by letter of August 25, 1894, that "when, in the extension of the lines of public surveys, a lake is meandered, its area is segregated from the public domain, and beds of inland non-navigable meandered lakes or lands uncovered by the recession of the waters of such lakes from natural or artificial causes, since the survey and [and] disposition of the adjacent shore lands, do not belong to the United States, but to the riparian owners." The Department, by letter of November 30, 1894, concurred in the views of your office and stated that from the facts then appearing the government had no jurisdiction over said lands and no power to direct their survey.

It appears from a communication by the chief engineer of the St. Francis Levee district, dated September 3, 1901, set forth in your letter, that this matter was brought to the attention of the department in 1894, with a view to having the lands surveyed and disposed of by the government if it still holds the title. The purpose of the board was to have the title of the government divested, if it had any, so that the lands might pass into private ownership in order that they may be subject to the tax for their proportion of the cost in constructing levees. He says:

If the General Government has no jurisdiction of these unsurveyed lands and does not claim any, and if a survey of them cannot therefore be made by the government, then it is the purpose of our Board to have them surveyed and sell them or quit-claim them and place them on our levee tax books, so that they may be taxed for levee purposes and therefore pay their proportion towards the

construction of the levee and drains by which they have been

and are being so greatly improved and benefited. If the

General Government will survey them so that we can tax them when parties buy them from the Government or homestead them, then our purpose will be equally accomplished.

It is not questioned that the portions of said townships, which are represented on the plats of survey as bodies of water are now valuable lands. On the contrary, the chief engineer states that he knows of his own personal knowledge that farms of great value are now cultivated in the very bottom or lowest places of some of these unsurveyed lands, but he adds: "all of this conversion of these low

lands is of course due to our levees keeping the overflow out of the low lands, and our drainage system which affords them drainage."

It may be mentioned in this connection that by the agreement between the United States and the State of Arkansas, entered into February 23, 1895, and ratified by the act of April 29, 1898 (30 Stat., 367), the State of Arkansas relinquished to the United States all claim to the swamp lands in said state, except such as has been patented, approved and confirmed to the State at the date of said agreement, but said act of April 29, 1898, confirmed the title of all persons who had purchased from the state any unconfirmed swamp land and had received, a deed for the same. As these lands had not been patented, approved, or confirmed to the State and had not been sold, by the State to any person, except perhaps one tract which it is alleged had been sold prior to said agreement, the "St. Francis Levee District" can not sustain its claim to said lands under the swamp land grant, and unless the title of the government has been otherwise divested or its right to said lands was concluded by the approval of the township surveys and the disposal of the adjacent lands, the action of the St. Francis Levee District in disposing of its said lands is without warrant or authority and steps should be taken to enjoin it from disposing of the same and its purchasers should be enjoined from cutting the timber thereon.

Therefore the conditions existing at the date of the township surveys is the important fact to be ascertained in order to determine whether steps should be taken to prevent depredations on these lands. The returns of the township surveys show upon their fact that what are now alleged to be unsurveyed portions of said townships were then actually bodies of water and were properly meandered as such. There is nothing in the report of the special agent, or in any of the papers submitted therewith, to impeach those returns as to the physical conditions of land and water at that time.

99 The opinion expressed by the Secretary of the Interior in his letter of November 30, 1894, herein referred to, was based upon the decision of the Supreme Court in the case of *Hardin vs. Jordan* (140 U. S., 371), assuming that there was no mistake in the surveys and that the lands contiguous to the meander line had been disposed of. In the case of *Hardin vs. Jordan* the doctrine was clearly announced that the right and title of a grantee from the United States of public lands bordering on non-navigable lakes and ponds, extends to the center of the lake or pond if the government has not reserved any right or interest that might pass by the grant or done any act showing an intention to make such reservation. The rights of riparian proprietors are controlled by the respective laws of the states, but that does not affect the question as to whether the general government is, by disposing of the public lands bordering on non-navigable lakes and ponds, properly meandered, concluded from afterwards exercising jurisdiction over said lands and from disposing of the same. Upon this question the court said:

It has never been held, that the lands under water, in front of such grants, are reserved to the United States, or that they can be

afterwards granted to other persons, to the injury of the original grantees. The attempt to make such grants is calculated to render titles uncertain, and to derogate from the value of natural boundaries, like streams and bodies of waters.

While the United States does not, by the approval of the survey, and the disposal of lands contiguous to the meander line, part with its title to lands that were erroneously omitted from survey, yet, as stated in the decision of the court in *Hardin vs. Jordan*, supra, there should be some extraordinary proof of mistake on the part of the surveyor in order to interfere with the passing of the land as riparian lands. It appears upon the face of the township plats of survey, and from the field-notes thereof, that the lands in question were at the dates of the survey covered by bodies of water, which were properly meandered as such, and it does not appear from the report of the special agent that he has any evidence at hand to support his opinion that said lands at the time of survey were simply covered by overflow from the Mississippi river, nor is there anything shown by your letter or by the papers submitted therewith that tends to impeach the returns of the township surveys.

More than fifty years have passed since the dates of the respective surveys of the township in which these lands are situated, 100 and it does not appear that the correctness of those surveys was ever questioned within the time when the physical conditions of the townships at the date of the survey could easily have been ascertained. These facts were evidently taken into consideration by your office and by the Department in 1894, when the request of the St. Francis Levee District to have said lands surveyed was refused.

The action of the board of directors of the St. Francis Levee District in exercising control over said lands appears to have been prompted by the disclaimer of jurisdiction and authority over them by the government, as expressed in the letters of your office and of the department, above referred to, and such disclaimer was based upon the information furnished by the records of your office, which show that the authority and jurisdiction of the government over said lands was terminated by the approval of the surveys and the sale of the lands along the meander lines. It does not appear from anything in the record whether the body of water that once covered the lands in question was navigable or not, but the result would be the same in either case. If it was a non-navigable body of water the riparian right vested by the sale of the lands along the meander lines by the government. If it was a navigable body of water the title of the bed thereof passed out of the United States upon the admission of the State to the Union, and was therefore subject to the laws of the State. The surveyed lands in said townships adjacent to the meandered waters having been disposed of, as appears from your letter of July 10, 1902, and it not being shown that said waters were not properly meandered, and the jurisdiction and control of the government over the lands in question having thus terminated, the action of the Department of November 30, 1894,

is adhered to, and no further or other action will be taken with reference to said lands.

The papers are herewith returned.

Very respectfully,

E. A. HITCHCOCK, *Secretary*.

C. H. McM.

Endorsed: Filed in the District Court on December 13, 1913.

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## DEFENDANT'S EXHIBIT 23.

## Section 22, Township 12 North, Range 9 East.

No. Rec.	Name of person paying same.	Amount.	Date.	Acres.	Year tax due.
1495.	Lee Wilson & Co..	\$25.15	5/10/12	154	1911
1478.	Same .....	16.36	1/27/11	154	1910
1478.	Same .....	15.98	1/17/10	154	1909
1477.	Same .....	21.63	1/ 9/09	640	1908
1907.	Same .....	71.60	1/ 6/08	640	1907
1910.	Same .....	23.68	1/15/07	640	1906
909.	Same .....	23.68	1/16/06	640	1905
930.	R. E. Lee Wilson..	46.87	4/ 8/05	640	1904
			No date		
1207.	Same .....	34.34	No stub	640	1903
		No tax	No date		
1610.	Same .....	books	No stub	640	1902
1037.	Wilson & Beall...	"	4/ 7/02	640	1901
838.	R. E. Lee Wilson..	23.68	5/18/01	640	1900
295.	Hale & Quinn....	23.68	4/10/00	640	1899

## N. ½ S. ½ Section 26, Township 12 North, Range 9 East.

No. Rec.	Name of person paying same.	Amount.	Date.	Acres.	Year tax due.
1495.	Lee Wilson & Co..	\$26.25	5/10/12	160	1911
1478.	Same .....	17.00	1/27/11	160	1910
1478.	Same .....	16.60	1/17/10	160	1909
1477.	Same .....	8.37	1/ 9/09	160	1908
1907.	Same .....	17.40*	1/ 6/08	160	1907
1910.	Same .....	14.80	1/15/07	160	1906
909.	Same .....	14.80	1/16/06	160	1905
930.	R. E. Lee Wilson..	12.00	4/ 8/05	160	1904
1207.	Same .....	12.00	No date	160	1903
		No tax			
1610.	Same .....	books	"	160	1902
1037.	Wilson & Beall...	"	4/ 7/02	160	1901
825.	R. E. Lee Wilson..	5.92	4/10/11	160	1900
	& Beall				
877.	Wilson & Beall...	5.92	4/ 5/00	160	1899

## 102 Section 27, Township 12 North, Range 9 East.

No. Rec.	Name of person paying same.	Amount.	Date.	Acres	Year tax due.
1495.	Lee Wilson & Co..	\$48.15	5/10/12	283	1911
1478.	Same .....	28.80	1/27/11	283	1910
1478.	" .....	59.76	1/17/10	283	1909
1477.	" .....	17.75	1/ 9/09	273	1908
1907.	" .....	28.89	1/ 6/08	273	1907
1910.	" .....	18.50	1/15/07	273	1906
909.	" .....	18.50	1/16/06	273	1905
930.	R. E. Lee Wilson..	20.44	4/ 8/05	273	1904
			No date		
1207.	Same .....	20.55	No stub	273	1903
1910.	" .....	No tax books	"	273	1902
1037.	Wilson & Beall...	"	4/ 7/02	273	1901
838.	R. E. Lee Wilson..	10.10	5/18/01	273	1900
295.	Hale & Quinn....	10.10	4/10/00	273	1899

Endorsed: Filed in the District Court, on December 13, 1913.

## DEFENDANT'S EXHIBIT 24.

## Section 22, Township 12, Range 9 East.

Name.	Year.	Acreage.	Tax.	Receipt.
St. Francis Levee Board...	1893	...	.....	...
" .....	1894	...	.....	...
" .....	1895	...	.....	...
" .....	1896	...	.....	...
" .....	1897	...	.....	...
" .....	1898	...	.....	...
William Hunter .....	1899	640	25.60	826
" .....	1900	640	25.60	564
" .....	1901	640	25.60	952
" .....	1902	640	25.60	967
R. E. L. Wilson .....	1903	640	38.40	932
" .....	1904	640	38.40	696
" .....	1905	640	38.40	975
" .....	1906	640	38.40	858
" .....	1907	640	51.20	...
" .....	1908	640	51.20	1070
" .....	1909	640	70.40	1347
" .....	1910	640	70.40	996

I, H. A. Morrison, Secretary of the Board of Directors of The St. Francis Levee District and custodian of all tax records of said District, do hereby certify that the above is a copy showing in whose name land is assessed, number of acres, taxes assessed and number of

tax receipt issued against Section twenty two (22) township twelve (12) range nine (9) East.

103      Witness my hand and seal this 14th day of Jan'y, 1913.

[SEAL.]

H. A. MORRISON, *Secretary*.

Endorsed: Filed in the District Court, on December 13, 1913.

### DEFENDANT'S EXHIBIT 25.

#### Section 27, Township 12, Range 9 East.

Name.	Year.	Acreage.	Tax.	Receipt.
St. Francis Levee District.....	1893			
“ .....	1894			
“ .....	1895			
“ .....	1896			
“ .....	1897			
“ .....	1898			
William Hunter .....	1899	273	10.92	826
“ .....	1900	273	10.92	564
“ .....	1901	273	10.92	953
“ .....	1902	273	10.92	968
R. E. Lee Wilson.....	1903	273	16.38	982
“ .....	1904	273	38.59	696
“ .....	1905	640	38.40	975
“ .....	1906	640	38.40	858
“ .....	1907	290	23.20	
“ .....	1908	290	23.20	1070
“ .....	1909	290	25.20	1347
“ .....	1910	290	31.90	996

I, H. A. Morrison, Secretary of the Board of Directors of The St. Francis Levee District and custodian of all tax records of said District, do hereby certify that the above is a copy showing in whose name land is assessed, number of acres, taxes assessed and number of tax receipt issued against Section twenty-seven (27), township twelve (12), range nine (9) East.

Witness my hand and seal this 14th day of Jan'y, 1913.

[SEAL.]

H. A. MORRISON, *Secretary*.

Endorsed: Filed in the District Court, on December 13, 1913.

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## DEFENDANT'S EXHIBIT 26.

Northwest Quarter Section 26, Township 12, Range 9 East.

Name.	Year.	[Acreage.]	Tax.	Receipt.
St. Francis L. Dist.....	1893			
“.....	1894			
W. B. Waldron, S $\frac{1}{2}$ N $\frac{1}{2}$ .....	1894	152	6.08	
“ S $\frac{1}{2}$ N $\frac{1}{2}$ .....	1895	152	6.08	
St. Francis L. D. N $\frac{1}{2}$ N $\frac{1}{2}$ .....	1895			
“.....	1896			
Tate & Beasley S $\frac{1}{2}$ N $\frac{1}{2}$ .....	1896	152		
“ S $\frac{1}{2}$ N $\frac{1}{2}$ .....	1897	160	6.40	
St. Francis L. D. N $\frac{1}{2}$ N $\frac{1}{2}$ .....	1897			
“ N $\frac{1}{2}$ N $\frac{1}{2}$ .....	1898			
N. O. Tate, S $\frac{1}{2}$ N $\frac{1}{2}$ .....	1898	160	6.40	211
Wilson & Beale N $\frac{1}{2}$ N $\frac{1}{2}$ .....	1899			
S. L. Pratt S $\frac{1}{2}$ N $\frac{1}{2}$ .....	1899			
“ S $\frac{1}{2}$ N $\frac{1}{2}$ .....	1900	160	6.40	980
Wilson & Beal N $\frac{1}{2}$ N $\frac{1}{2}$ .....	1900	160	6.40	834
“ N $\frac{1}{2}$ N $\frac{1}{2}$ .....	1901	160	6.40	952
S. L. Pratt S $\frac{1}{2}$ N $\frac{1}{2}$ .....	1901	160	6.40	988
E. L. Westbrook.....	1902	160	6.40	968
Wilson & Beal.....	1902	160	6.40	968
R. E. L. Wilson.....	1903	320	19.20	982
“.....	1904	320	19.20	696
“.....	1905	320	19.20	975
“.....	1906	320	19.20	858
“.....	1907	320	25.60	
“.....	1908	320	25.60	
“.....	1909	320	35.20	1347
“.....	1910	320	35.20	996

I, H. A. Morrison, Secretary of the Board of Directors of The St. Francis Levee District and custodian of all tax records of said District, do hereby certify that the above is a copy showing in whose name land is assessed, number of acres, taxes assessed and number of tax receipt issued against north west quarter of section twenty-six (26) township twelve (12) range nine (9) east.

Witness my hand and seal this 14th day of Jan'y 1913.

[SEAL.]

H. A. MORRISON, *Secretary.*



## DEFENDANT'S EXHIBIT 27.

GOLDEN LAKE, ARK., Dec. 10th, 1892.

Com. Gen. Land Office, Washington, D. C.

DEAR SIR: I write you to learn how to proceed to obtain Govern-  
ment lands being in lakes and bayous which has never been  
105 surveyed. Please confer a favor by giving full information  
on the subject referred to.

Address.

(Signed)

R. E. LEE WILSON,  
Golden Lake, Ark.U. S. General Land Office,  
Received  
Dec. 13 1892

140597.

R. E. Lee Wilson,  
Golden Lake, Ark.Dec. 10" 1892.  
Rel. to, obtaining  
lands in lakes and  
bayous.

Ans. Jan'y 13, 1893.

J. T. A.

E.

Endorsed: Filed in the District Court on December 13, 1913.

## EXHIBIT "C" TO ANSWER.

*List of "Swamp and Overflowed lands" situated in Townships North  
of the base line and East of the 5th Principal Meridian, in the  
Helena Land District, selected by the State Locating Agents.*

Part of section.	Section.	Town.	Range.	Acres.	Remarks.
X      X	X	X	X	X	X
Township.		12	9.	15,003.97.	
X      X	X	X	X	X	X

## SURVEYOR'S OFFICE, LITTLE ROCK.

I, hereby, certify that the above and foregoing list (marked A), is  
a true and correct transcript from the Original filed in the office of  
Surveyor General, by the Governor of the State of Arkansas, with  
only such modifications as to make the description of the several  
tracts agree with the plats on file in this office.

September 22nd, 1852.

L. GIBSON,  
Surveyor General.

Division K.

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Arkansas.  
Swamp and Overflowed lands.  
Approved May 11, 1853.  
List No. 1, District of Helena.

Parts of sections.			Section.		Swamp lands, township.		Range.				
X	X	X	X	X	X	X	X	X	X	X	X
Township.			12.		9 (except section 160). 14, 5, 5, 10, 13.						
X	X	X	X	X	X	X	X	X	X	X	X

GENERAL LAND OFFICE,  
May 6th, 1853.

Respectfully submitted for approval,

JOHN WILSON,  
*Commissioner.*

DEPARTMENT OF THE INTERIOR,  
WASHINGTON, May 11, 1853.

The lands embraced in the foregoing list are hereby approved to the State of Arkansas and the act of Congress appd. the 28th of September, 1853, subject to any valid legal rights which may exist thereto.

R. McCLELLAND,  
*Secretary.*

Endorsed: Filed in the District Court, on December 13, 1913.

#### EXHIBIT "D" TO ANSWER.

#### No. 6.

The United States of America, to all to whom these presents shall come, Greeting:

Whereas, by the Act of Congress approved September 28, 1850, entitled "An Act to enable the State of Arkansas and other states to reclaim the "Swamp Lands," within their limits," it is provided, that all "swamp and overflowed lands", made unfit thereby for cultivation within the state of Arkansas, which remain unsold at the passage of said act, shall be granted to said state; and whereas, in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "swamp and overflowed lands," enuring to said state, under the act aforesaid, being situated in the District of Lands subject to sale at Helena, Arkansas, to-wit:

107 Township Twelve (12) North Range Nine (9) East.  
The whole of the township except Section sixteen (16)

containing fourteen thousand five hundred and sixty-five acres and three hundredth- of an acre, according to the official plats of survey of the said lands returned to the General Land Office, by the Surveyor General.

And for which the Governor of the said State of Arkansas, did, on the twentieth day of June one thousand eight hundred and fifty-three, request a patent to be issued to the said State as required in the aforesaid act.

Now, therefore, know ye, that the United States of America, in consideration of the premises, and in conformity with the Act of Congress aforesaid, has given and granted, and by these presents do give and grant, unto the said state of Arkansas, in fee simple subject to the disposal of the legislature thereof, the tracts of land above described.

To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances thereto belonging, unto the said State of Arkansas, in fee simple, and to its assigns forever.

In Testimony Whereof, I, James Buchanan, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the twenty-seventh day of September in the year of our Lord one thousand eight hundred and fifty-eight and of the Independence of the United States, the eighty-third.

By the President:

JAMES BUCHANAN,  
By ———, *Secretary.*  
JOS. S. WILSON,  
*Acting Recorder of the General  
Land Office. Ad in'.*

Recorded, Vol. 1 [Pag-] 442 to 457 Inclusive.

Endorsed: Filed in the District Court, on December 13, 1913.

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## EXHIBIT "E" TO ANSWER.

## State Land Office.

Reuben G. Dye, Commissioner.

William B. Owen, Deputy.

Date of Deed.		To Whom Issued.	Description of Certificate.		By Whom Issued.	District.
			on which deed issued			
			Date.	Character and Number.		
1859						
Sept. 12		William B. Waldron.	1859 Sep. 12	Patent. 144.	Auditor	Arkansas

## State Land Office.

Reuben G. Dye, Commissioner.

William B. Owen, Deputy.

Description of Lands				Area		Price per acre		Amount		County.	No. of Deed.	Remarks.
Part of Section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cts.	Dollars.	Cts.			
Full.	Sec. 22	12 N.	9 E.	164	07	50	82.	04	Mississippi.		4070	

Endorsed : Filed in the District Court, on December 13, 1913.

The United States, by its Attorney General, filed this bill to quiet its title to 853.60 acres of land described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9; the Southeast quarter of the Northwest quarter, Southwest quarter of the Northeast quarter, West one-half of the Southeast quarter, and East one-half of the Southwest quarter Section 22; lots 1, 2, 3, 4, 5, 6, Northwest quarter of the Northeast quarter; Northeast quarter of the Northwest quarter, and the South one-half of the Northeast quarter, Section 27, and that fractional part of the West one-half of the Northwest quarter of Section 26, included within the survey approved April 28, 1910, all in township 12 North, Range 9, East of the Fifth Principal Meridian, in the County of Mississippi, State of Arkansas.

There were several defendants who were supposed to make claim to these lands, but all filed disclaimers except Lee Wilson & Company, which is now the sole defendant.

The material allegations in the complaint are that these lands are a part of the public domain by the Louisiana Purchase; that prior to the year 1910 they were wild, unoccupied, unappropriated and unsurveyed; that they were surveyed by the government in 1910, and thereupon held subject to entry under the homestead laws, and such entries were made by various qualified persons in conformity with the laws of the United States and the rules and regulations of the General Land Office; that these persons entered upon these lands and are now in possession in privity with, but not adverse to the paramount right of the government; that by an Act of the General Assembly of the State of Arkansas, approved February 15, 1893, and subsequent amendments, a certain section of the St. Francis basin in the State of Arkansas, and which includes these lands, was created as a political subdivision of the State as the St. Francis Levee District; that until the year 1882 no attempt was made by the officers of the State to tax these lands, but that year they were assessed for taxes and the same not being paid they were sold under the laws of the State of Arkansas, and the defendant derails title to these lands under and by virtue of such tax sale and deeds executed thereunder, and also under decrees of the chancery court of Mississippi County, where these lands are lying, in an attempt of the St. Francis Levee Board to have its title to said lands confirmed.

The bill then sets out defendant's claim of title, showing that in 1859 the State of Arkansas purported to convey by its patent to W. B. Waldron Section 22, the North one-half of the North one-half of Section 26, and fractional Section 27, Township 12 North, Range 9 East; Waldron's title was forfeited to the State for non-payment of taxes; on March 27, 1885, the clerk of Mississippi County executed a deed to the State for these sections in pursuance of a decree of the court in what is called the "Overdue Tax Suit" rendered on February 23, 1883; the sale to the State was confirmed by chancery court on July 22, 1884; in 1903 the State granted all its lands in Mississippi County to the St. Francis Levee District;

on December 12, 1894 the said chancery court, by its decree, confirmed title to said lands in the St. Francis Levee District, and by certain mesne conveyances these lands were finally conveyed to the defendant. It is charged that all the conveyances under which defendant claims title to these lands are null and void; that the title to these lands never passed out of the United States, as they were unsurveyed lands, but that they are a cloud on the title of the government and the rights of the persons who have entered the lands as homesteads; that the defendant has harassed, intimidated and interfered with these persons in the quiet possession of their homesteads and threatens to continue to do so and thereby prevent them from complying with the requirements of the homestead laws of the United States in respect to cultivation, improvements and residence upon these lands.

The prayer of the bill is the usual one to cancel defendant's deed and evidence of claim of title; that plaintiff's title be quieted against the claim of defendant and that the defendant be enjoined from molesting or in any wise interfering with the quiet and peaceable enjoyment of the lands by the persons claiming through plaintiff under the homestead laws.

It is unnecessary to set out the admissions and immaterial denials contained in the answer. The defenses upon which the defendant relies, and which were insisted on in the argument of the cause are, that these lands were by the government surveyed in 1841 as a part of its public domain; that in making said survey the township lines of the township were actually run, surveyed, located, established and marked on the ground as provided by law, and that true and proper maps, plats and field notes of said survey were returned to and filed in the General Land Office of the plaintiff at Washington, and were

111 by the Surveyor General duly accepted and approved as provided by law; that in the government survey of said township made in 1841, the lines of the sections and of the subdivisions of sections were actually run, located, established and marked on the ground as required by law; that at the time of said survey there existed in said township a small inland non-navigable lake, known as "Moon Lake," which lake was meandered in the survey as provided by law, the meander lines being shown on the official plats of said survey to the General Land Office.

The answer then sets up the Act of Congress of September 28, 1850, 9 Stat., 519, Known as the Swamp Land Grant, and that the entire township was selected by the State of Arkansas as swamp land in 1852, and approved by the Secretary of the Interior on May 11, 1853; that in accordance with said approval the entire township was, on April 27, 1858, patented by the United States to the State of Arkansas, with the exception of Section 16, which had theretofore been granted to the State as school lands; this conveyance, it is claimed passed the title to the entire township to the State of Arkansas; that the State conveyed these lands according to the plats and field notes of the survey of 1841, and that by mesne conveyances from the State of Arkansas the title to all of these lands is now in the defendant, which is the owner of all the lands in the three sections

inside as well as outside of the meander lines of said lake as it appears in the original plats. It is charged that the State always claimed to be the owner of all of sections 22, 26 and 27 in that township and that it assessed 640 acres in each of said sections for the years 1900 to 1910 inclusive, and these taxes were paid thereon by the defendant and those under whom it claims title; that the entire township was granted to the State of Arkansas by the Swamp Land Act of 1850 for the purpose of aiding it in the construction and maintenance of levees, to protect the lands in the district from overflow, and also to build drainage canals to reclaim the swamps and make them suitable for cultivation; that levees have been built and a drainage canal dug and the defendant has been paying the taxes levied for these purposes; that by reason thereof the lands have increased in value; that the defendant purchased them in good faith for a valuable consideration believing that they had passed to the State and its grantees.

The answer also pleads the five years statute of limitations under Section 8 of the Act of Congress of March 3, 1891, Chap. 561, 26 Stat. 1099, and an estoppel.

112 The bill was filed and process issued on August 4, 1911.

W. H. Martin, U. S. Attorney; Willis N. Mills, of Washington, D. C. and J. A. Tellier, of Little Rock, Ark., Special Assistants to the Attorney General, for the Plaintiff. Coleman & Lewis, of Little Rock, Ark., for the Defendant.

TRIEBER, D. J. (after stating the facts as above):

It is undisputed that all the lands in that township were swamp and overflowed lands at the time of the enactment of the Swamp Land Act of September 28, 1850, 9 Stat. 519, and continued as such until recently, when levee- were built and a drainage canal dug; that the lands in controversy were resurveyed in 1910; that the field notes of the survey, made in 1839 and 1840 (although the parties speak of this survey as of 1841) were filed with the Surveyor of Public Lands for Arkansas in 1841, and the plat made therefrom, which was approved in 1845, shows that these lands were described as a non-navigable lake and meandered as such. But it is claimed on behalf of the plaintiff that, in fact, there was no lake or permanent body of water of any kind there at the time of the original survey and long before that time, and that the survey describing these lands as a lake was fraudulent; that the surveyor never ran any meander lines on the ground but made them fraudulently; and, the lands being in fact unsurveyed lands, the title thereto never passed from the government. That by the compromise between the United States and the State of Arkansas, approved by the Act of Congress of April 29, 1898, Chap. 229, 30 Stat. 368, the State of Arkansas relinquished to the United States all adjusted or unadjusted claims under the Swamp Land Act of 1850 and that of 1857 not theretofore disposed of. On the other hand it is insisted that there was a non-navigable lake or permanent body of water on these lands at the time the original survey was made. In order that the facts may be better

understood a copy of the original plat made from the field notes approved in 1845, is made an appendix to this opinion. From this plat it will be seen that, according to the field notes of the surveyor, there was at that time a lake as claimed by the defendant and that it was properly meandered. It is therefore claimed that the defendant being admittedly the owner of all the surveyed lands outside of the meander lines, it is, as the riparian owner, under the laws of the State of Arkansas as construed by the highest court of that State, entitled to the lands described as a "lake," which are the lands now in controversy. Under the laws of this State the riparian owner on a non-navigable body of water is the owner to the center of the lake. *Railway Company vs. Ramsey*, 53 Ark. 514; *Chapman & Dewey Land Co. vs. Bigelow*, 77 Ark. 338; *Rhodes vs. Cissel*, 82 Ark. 367; *Glasscock vs. National Box Co.* 104 Ark. 154; *Harrison vs. Fite*, 148 Fed. 781, 783, 78 C. C. A. 447, a case involving similar lands in the State of Arkansas.

A rule of property thus established by the highest court of the State is binding on the national courts. *Hardin vs. Jordan*, 140 U. S. 371; *Hardin vs. Shedd*, 190 U. S. 508; *Kean vs. Calumet Canal Co.* 190 U. S. 452.

But it is equally well settled by the decisions of the Supreme Court of the United States that the making of a meander line has no certain significance. *French-Glenn Live Stock Co. vs. Stringer*, 185 U. S. 47, 52.

"It does not necessarily import that the tract inside of the meander lines is not surveyed, or will not pass by a conveyance of the upland shown by the plat to border on the lake. It is not always a boundary." *Kean vs. Calumet Canal Co.* *supra*.

Nor does it follow that a patent for the surveyed lands adjoining carries with it the lands inside the meander lines. *Horne vs. Smith*, 159 U. S. 40, 45; *Niles vs. Cedar Point Club*, 85 Fed. 45, 29 C. C. A. 5, affirmed in 175 U. S. 300; *Hardin vs. Jordan*, *supra*.

Evidence showing that the meander line was not at or near the water would make it a boundary, and that regardless of whether the running of the water line was a mere oversight or whether the surveyors were of the opinion that the action of the water would soon wash the low-lands away. *Security Land & Expl. Co. vs. Burns*, 193 U. S. 163, 186, 187.

In *Horne vs. Smith*, *supra*, it was held:

"Although it was unsurveyed, it does not follow that a patent for the surveyed tract adjoining carries with it the land which, perhaps, ought to have been, but which was not in fact surveyed. The patent conveys only the land which is surveyed, and when it is clear from the plat and the surveys that the tract surveyed terminated at a particular body of water, the patent carries no land beyond it." 159 U. S. 45.

If no survey was in fact made, or no meander line in fact run, or if no body of water in fact existed near the alleged meander line, the government cannot be estopped by the fact that the field notes and plat made therefrom show the existence of a lake. *Kirwan vs. Murphy*, 189 U. S. 35, 53, 54. In that case it was held:



"The land department must necessarily consider and determine what are public lands, what lands have been surveyed, what are to be surveyed, what have been disposed of, and what remain to be disposed of, and what are reserved. \* \* \* The administration of the public lands is vested in the land department, and its power in that regard cannot be divested by the fraudulent action of a subordinate officer, outside his authority, and in violation of the statute. *Whiteside vs. United States*, 93 U. S. 247; *Moffat vs. United States*, 112 U. S. 24; *Hume vs. United States*, 132 U. S. 406, 414. The courts can neither correct nor make surveys. The power to do so is reposed in the political department of the government, and the Land Department, charged with the duty of surveying the public domain, must primarily determine what are public lands subject to survey and disposal under the public land laws. Possessed of the power, in general, its exercise of jurisdiction cannot be questioned by the courts before it has taken final action. *Brown vs. Hitchcock*, 173 U. S. 473."

To the same effect are the late decisions in *Little vs. Williams*, 88 Ark. 37, affirmed in 231 U. S. 335; *Chapman & Dewey Lumber Co. vs. St. Francis Levee District*, 232 U. S. \* \* \* (opinion delivered January 26, 1914.)

The rules of law as established by the numerous decisions of the Supreme Court on that subject may be epitomized as follows: If there were no mistakes made in the survey, and a permanent body of non-navigable water was properly meandered, the ownership of the meandered tract is controlled by the laws of the State in which the lands are situated, and if they hold that such an owner is entitled to claim ownership to the center of the lake, the national courts will follow that rule. If, on the other hand, the surveyors were mistaken or acted fraudulently, and there was at the time of the survey a large tract of land beyond the meander lines, uncovered by permanent bodies of water (exceptional dry seasons of course excepted) purchasers of the fractional tracts bounded by the meander lines are not entitled to the land not included in  
115 the survey, the meander lines constituting, in that case, boundaries.

The Secretary of the Interior in 1908, after a hearing upon notice, at which many parties, some of them squatters who wanted to acquire them as homesteads, others claimants as riparian owners, such as the defendant in this case claims to be, and also representatives of the St. Francis Levee District, were present and heard, ordered a survey of these meandered lands in order that they might be brought under the operation of the laws governing the disposal of like public lands. *Arkansas Sunk Lands*, 37, L. D. 345. The Secretary made a finding that these lands were not covered by any permanent body of water at the time of the original survey or at the time of the enactment of the Swamp Land Act or when the State made its selection. He further found:

"It seems clear from what is now before the department that a permanent body of water did not occupy these lands at the time of the public survey, and that, except as to a portion shown to be high

and dry upland, sometimes referred to as highlands, the great body of the land was swamp and overflowed lands both at the date of the public survey and the passage of the Swamp Land Grant of 1850."

This was adhered to on an application for a rehearing had in 1909. 37 L. D. 462.

That the Secretary of the Interior has the power to inquire into the extent and validity of the rights claimed against the government until the legal title has passed is undoubted. *Michigan Land & Lumber Co. vs. Rust*, 168 U. S. 589, 593, and authorities there cited.

A survey was accordingly made in 1910. This last survey shows the land in controversy, as will be seen from a copy of the plat filed with this opinion.

Assuming, as is claimed by counsel for the defendant, that this finding of the Secretary is not conclusive, there is some contention as to whether it is even *prima facie* evidence of the facts found. On the part of the defendant it is claimed that the original survey is *prima facie* correct and the burden of proof is upon the plaintiff to overthrow this presumption, regardless of the findings made by the Secretary of the Interior. On the other hand, the contention of the plaintiff is that the *prima facie* presumption of the original survey has been overcome by the resurvey of 1910 ordered to be made by the Secretary of the Interior after a hearing, and that the

burden of proof to show that this land was in fact a lake is upon the defendant, and in support of this contention they cite *Knight vs. United States Land Assn.* 142 U. S. 161; *Cragin vs. Powell*, 128 U. S. 691; *Tubbs vs. Wilhoit*, 138 U. S. 134; *Michigan Land & Lumber Co. vs. Rust*, *supra*; *Johnson vs. Elder*, 92 Ark. 32, 40.

But the evidence in this case, although very voluminous, each side having introduced a great number of witnesses, is of such a nature that it is wholly immaterial what presumption should be indulged in. The oral testimony is by witnesses who have known something about the land only within the last thirty or forty years, many of them for a much shorter period. Not a single witness was familiar with the land when the original survey was made. For this reason most of the testimony is either hearsay or opinion evidence. That is conflicting, although the court finds that the preponderance is strongly in favor of the government that these lands were not submerged lands, nor was there a lake there at the time of the survey. The evidence of the topography of this area shows conclusively that no lake or permanent body of water could possibly have been there within the last one hundred years or more. It is undisputed and admitted by the defendant that there is no evidence whatever to show that there was a retaining bank or shore line at or near the east meander line; while there is some testimony that there is a retaining bank where the meander line on the west side has been marked in the original survey, the great weight of the evidence is that that line is that of Plum Bayou, that the nearest point is several hundred yards from the meander line, and as it runs south it is farther away from it. Moon Lake, or Half Moon Lake, as it is

called by some of the witnesses, which it is claimed is the meandered lake, is, in fact, a small body of water near the west meander line, a mere pond, which at no time ~~exceeded~~ one acre; its banks were well defined and it is surrounded by a growth of timber which could not have grown in a permanent body of water. There is also a small body of water near the east meander line, but this covered only a few yards, not large enough to be dignified as a pond, and may properly be designated as what is known in that section as a "hog-wallow." It establishes beyond a doubt that no depression can be noticed in the meandered area; that there is no appreciable difference in the elevation between the lands of the two sides of the meander lines. The lines of levels show an elevation of 232.2 at the east meander line, and continuing west never gets below this, and at the west line it is 233.4. The highest elevation is 235, and

is within the interior boundaries of the area marked "lake."  
 117 It is also shown by the undisputed evidence, and the many photographs taken and filed as exhibits to the testimony, that there is a heavy growth of large living trees, which could not possibly have grown on submerged lands. Many of them, as shown by the testimony of Dr. Henry C. Cowells of the University of Chicago, one of the most eminent ecologists in this country, and also by the testimony of an employee of the Forestry Bureau of the Department of Agriculture, who has had many years experience, are over seventy and some over two hundred years old. These trees are oaks, hackberry, maple, hickory, ash and red gum. None of these trees, it is shown, could possibly have grown on lands covered for any length of time with water.

There are also a number of old cypress trees found in the cypress brakes in this area, and while cypress will live in water under certain conditions, it is shown that they will die if submerged above the swell or buttressed base. Mr. Janes, also an ecologist of experience, testified that he examined all the timber for a distance of thirty-three feet of each side of the meander lines, counted the trees, and obtained their diameters; that there was no difference in the lands on either side of the meander lines; that he found the area in dispute to be a forest of many hardwood trees and some cypress trees of various ages and size. He found in the area numerous small mounds of earth, indicating that at that particular point trees of considerable size formerly grew, and were wind-thrown a long time ago, and at other places he found small depressions where trees had stood and the stumps burned out, which must have been on the land long before 1839. The percentage of trees he found to be as follows: ash 49%, locust 15.06%, cypress 12.07%, hackberry 11.26%, elm 9.31%, oak 7.24%, maple 2.30%, persimmon 1.49%, hickory 1.03%. He counted and examined all the trees on twenty-five and one-half acres of this land, which strip he testified was a fair average of the entire area; there were 870 trees on that strip, and he found the diameter of these, in inches, as follows: 25.73% twelve inches, 16.67% fourteen inches, 11.01% sixteen inches, 9.84% eighteen inches, 10.04% twenty inches, 3.61% twenty-two inches, 3.51% twenty-four inches, 5.75% twenty-six inches, 4.38%

twenty-eight inches, 4.87% thirty inches, 1.27% thirty-two inches, 1.07% thirty-four inches, 1.36% thirty-six inches, 88% thirty-eight inches.

118 The testimony also establishes the fact that according to the original survey of 1839 and 1840, the meander lines of that township were three-fourths of a mile short and therefore could not be closed. This was shown not only by the testimony of plaintiff's witnesses but also by that of Mr. Payne, an assistant chief of the surveying division of the General Land Office, who was a witness on behalf of the defendant. From his testimony it appears that this survey was evidently never examined by the Land Office and never checked up at all, otherwise the incorrectness of the survey would necessarily have been discovered. His testimony on that point, after testifying to the incorrectness of the original survey, is:

"The presumption from the fact that there was a failure to close the lines is, on the face of it, that there was an incorrect survey, and that it was not examined by this office, and not checked up at all. Q. So that whatever discrepancy or inaccuracy fatal to the integrity of that survey, which might have appeared, may have remained undisclosed until about the year 1910. A. Yes, sir. Q. And for the period of seventy years that alleged survey of the meander line of that unsurveyed area showed on its [fact] in the office that it couldn't close by three-fourths of a mile, and if examined at any time during these seventy years the error would have been discovered? A. Yes, sir."

Without detailing all the testimony, the court is convinced beyond a reasonable doubt that there was no permanent body of water on the land meandered at the time the original survey was made nor for a long period before that time, nor at the time of the passage of the Act of 1850, or at the time the State made its selection. In the opinion of the court, no meander lines were actually traced by the surveyor; the most charitable view to take is that the survey having been made in December and January, usually the rainy season in that section, the surveyor found a great deal of water on it and to save himself the inconvenience of making an actual survey of that wet ground he put it in his field notes as a lake.

#### Unsurveyed Lands of the Government.

Does the fact that the patent to the State of Arkansas, under the Swamp Land Act of 1850, conveys "the whole township of twelve north, range nine east," (except Section 16) include the unsurveyed lands claimed by the defendant? The State, in its selection, asked for the whole township "containing 15,003.97 acres,"

119 That covered all the surveyed lands in the township as shown by the plat and did not include any unsurveyed lands. Had there been no meandered tracts the township would have contained 23,040 acres. The patent of the government is as follows: "Township twelve north of range nine east; the whole of the township, except Section sixteen, containing 14,526.11 acres according to the official plats of survey of the said lands returned to the General

Land Office by the Surveyor General." Section 16, excepted from this grant, and which is represented on the plats as containing 438.94 acres, had theretofore been granted to the State for school purposes, and therefore could not again be conveyed under the Swamp Land Act. Deducting this from all the surveyed lands it would leave 14,526.11. The difference of 39.92 acres between what the State selected and what was granted was probably caused by a mistake of the state officials in adding the acreage of the lands surveyed in the different sections, of which so many were fractional.

The words "public lands" mean such lands as are subject to sale or other disposal under the laws of the United States. *Newall vs. Sanger*, 92 U. S. 761, 763; *Leavenworth etc. R. R. Co. vs. United States*, 92 U. S. 733, 741; *Bardon vs. Northern Pacific R. R. Co.* 145 U. S. 535, 538; *Barker vs. Harvey*, 181 U. S. 481, 490; *Minnesota vs. Hitchcock*, 188 U. S. 373, 391. In *Barker vs. Harvey* the court said:

"'Public domain' is equivalent to 'public lands,' and these words have acquired a settled meaning in the legislation of this country."

And in *Bardon vs. Northern Pacific R. R. Co.* it was held:

"The grant is of alternate sections of public land, and by public land, as it has long been settled, is meant such land as is open to sale or other disposition under general laws."

Unsurveyed lands could, therefore, not be subject to a grant under the Act of 1850 and similar acts, as they were not "public lands." *Horne vs. Smith*, 159 U. S. 40, 45; *United States vs. Curtner*, 38 Fed. (C. C.) 1, 9, 10; *Sawyer vs. Gray* (D. C.) 205 Fed. 160, 163, where the court held: "The government survey creates, not merely [identifies] sections of land."

In *Little vs. Williams*, 88 Ark. 37, 52, affirmed in 231 U. S. 335, it was held by the Supreme Court of Arkansas, in construing the effect of a similar description in another patent to the State for lands acquired under the Act of 1850, that:

120 "Descriptions of lands, according to terminology employed in the system of governmental surveys and plats of lands, is necessarily a reference to the plats of those surveys; for those terms are meaningless unless so considered with reference to the surveys and plats. There is nothing known of townships, sections and parts of sections of land except such as are described in the plats of the government surveys. Therefore, giving the word 'township,' used in the stipulation of facts, the meaning which we must attribute to the parties who employed the term, it has reference to the townships surveyed and platted by the government surveyors and means the townships according to the surveys and plats. A conveyance of the township 'according to plat of the survey' does not include lands which do not appear on the plat of the survey. We do not mean to hold that the unsurveyed land could not have been selected as swamp lands, and patented to the State by the use of proper descriptive terms in the patent; but this was not accomplished by reference to townships, sections or parts thereof, according to the plat of the survey, when the unsurveyed land did

not appear on the plats at all. The plats showed it to be water and not land."

In affirming this case Mr. Justice Van Devanter said:

"The unsurveyed land within the meander line was never selected by the State, or listed by the Secretary of the Interior, as swamp or overflowed land; nor was it ever patented to the State."

In *Chapman & Dewey Lumber Co. vs. St. Francis Levee District*, supra, in which the same question was before the Supreme Court of the United States, the patent to the State being for all of the township, except Section 16, containing 14,329.97 acres, Mr. Justice Van Devanter, speaking for the court said:

"Of course, the words in the patent, 'The whole of the township' are comprehensive, but they are only one element in the description and must be read in the light of the others. The explanatory words 'according to the official plats of survey of said lands returned to the General Office by the Surveyor General' constitute another element and a very important one, for it is a familiar rule that where lands are patented according to such a plat, the notes, lines, landmarks and other particulars appearing thereon, become as much a part of the patent and are as much to be considered in determining what is intended to include as if they were set forth in the patent.

*Cragin vs. Powell*, 128 U. S. 691, 696; *Jefferis vs. East Omaha Land Co.* 134 U. S. 178, 194. The specifications of the acreage is still another element, and, while of less influence than either of the others, it is yet an aid in ascertaining what was intended, for a purpose to convey upwards of 22,000 acres is hardly consistent with a specification of 13,815.67. *Ainsa vs. United States*, 161 U. S. 208, 229; *Security Land Company vs. Burns*, supra; 3 *Washburn on Real Prop.* 5th Ed. 427. Giving to each of these elements its appropriate influence and bearing in mind that the terms of description are all such as are usually employed in designating surveyed lands, we are of opinion that the purpose was to patent the whole of the lands surveyed, except fractional Section 16, and not the areas meandered and returned, as shown upon the plat, as bodies of water. \* \* \* As, then, the lands in controversy were not included in the patent, and, under the findings below did not pass to the State or to the defendants by riparian right with the adjoining fractional sections and subdivisions, it follows that they remain the property of the United States. *Niles vs. Cedar Point Club*, supra; *French Live Stock Co. vs. Springer*, supra; *Security Land Co. vs. Burns*, supra.

This is conclusive on this court.

It is true, as claimed by the defendant, that the Swamp Land Grant is in presenti, and passed title to such lands of its date September 28, 1850. As stated by Mr. Justice Fields in *Wright vs. Roseberry*, 121 U. S. 488, 509, after a review of all former decisions on that subject:

"The result of these decisions is that the grant of 1850 is one in presenti, passing the title to the lands as of its date, but requiring [identification] of the lands to render the title perfect; that the action of the Secretary in identifying them is conclusive against

collateral attack as the judgment of a special tribunal to which the determination of the matter is entrusted; but, when that officer has neglected or failed to make the identification it is competent for the grantees of the State, to prevent their rights from being defeated, to identify the lands in any other appropriate mode which effects that object. A resort to such mode of identification would also seem to be permissible where the Secretary declares his inability to certify the lands to the State for any cause other than a consideration of their character."

In *Chapman & Dewey Lumber Co. vs. St. Francis Levee District*, supra, it was also contended that the title to the lands in controversy, even though not included in the patent, passed to the State under the Swamp Land Act independent of any patent, but this  
122 contention was held by Mr. Justice Van Devanter to be untenable, the court holding:

"The lands were never listed as swamp land and their listing does not appear to have been even requested, doubtless because they were not surveyed."

In *Little vs. Williams*, supra, the court quotes with approval from *Rogers Locomotive Works vs. Emigrant Co.*, 164 U. S. 559 the following:

"While, therefore, as held in many cases, the Act of 1850 was in present, and gave an inchoate title, the lands needed to be identified as lands that passed under the Act, which being done, and not before, the title becomes perfect as of the date of the granting Act." And again, (p. 574): "It belonged to him (the Secretary of the Interior), primarily, to identify all lands that were to go to the State under the Act of 1850. When he made such identification then, and not before, the State was entitled to a patent, and 'on such patent' the fee simple vested in the State. The State's title was at the outset an inchoate one, and did not become perfect as of the date of the act until the patent was issued."

#### Confirmation Acts of Congress.

It is next claimed on behalf of the defendant that even if there was no permanent body of water there at the time of the original survey, as all the lands in that township were in fact swamp and overflowed lands in 1850, and were so at the time the State made its selection, which was filed in the General Land Office, on September 22, 1852, and approved by the Secretary of the Interior on May 11, 1853, the Confirmation Act of March 3, 1857, 11 Stat. 251, vested the title to the entire township in the State at once, even if no patent had ever been issued by the government. It is also claimed that by Section 3 of the Act of April 29, 1898, 30 Stat. 368, Comp. St. 1891, p. 1592, known as the Arkansas Compromise Act, the title to these lands was confirmed to the defendant. The Act of 1857 declared:

"That the selection of swamp and overflowed lands granted to the States by the Act of Congress approved September 28, 1850  
\* \* \* and heretofore made and reported to the Commissioner



of the General Land Office so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement, under any existing laws of the United States, be and the same are hereby confirmed and shall be approved and patented to the several states in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law."

123 Then follows a proviso which is immaterial as to the issues involved in the instant case.

The patent to the State which was issued in 1858, it is contended, could not derogate from nor limit the extent of the title of this area which had already passed to the State by the Act of 1857. *Martin vs. Marks*, 97 U. S. 346 is relied on as conclusive of this claim. In that case Mr. Justice Miller, speaking for the court, declared the intention of the lawmakers in enacting the Act of 1857 to have been:

"It seems that seven years after the passage of the Swamp Land Grant this failure of the Secretary to act had become a grievance for which Congress deemed it necessary to provide a remedy by the Act of March 3, 1857."

The report of the case does not show what kind of lands were there involved, whether surveyed or unsurveyed, meandered or not, dry or submerged; nor does the opinion of the Supreme Court of Louisiana (reported in 27 La. Ann. 527) from which court the cause was removed by writ of error, to the Supreme Court of the United States, show the nature of the lands involved. In order to ascertain the exact facts in that case the court procured a copy of the original record. This shows that the land in controversy in that case was surveyed land, was free from water, was not fractional or bordering on a water-course, was platted as the "South-east quarter of Section Seven, in Township twenty, of Range fourteen, containing 160 acres, had been selected as swamp land by the State of Louisiana, and approved by the General Land Office prior to the enactment of the Confirmation Act of 1857, and sold by the State one under whom the plaintiff Marks claimed title. For some reason the land had not been withdrawn from entry by the Government. Thereupon the defendant Martin entered it under the homestead laws, and received a patent therefor from the United States, dated May 20, 1873. As the facts in that case were different entirely from those shown to exist in the instant case, it is of course inapplicable, and cannot be considered as an authority for any of the issues herein involved.

If the lands in controversy were unsurveyed, and this is undisputed, then, as hereinbefore shown, they were not "public lands" within the meaning of the Act of 1850, and until surveyed did not pass by the grant nor could they be selected. If there was no grant to the State, there was nothing to confirm. The selection by the State, as shown by the recitals of the patent, were "according to the official plats of survey of the said lands returned to the General Land Office by the Surveyor General", giving the acreage of the surveyed lands. The patent to the State is "according to the official plats of survey, containing 14,526.11 acres."

124 In *Kirby vs. Lewis* (CC) 39 Fed. 66, 70, Judge Caldwell

held:



"The recitals in a deed constitute a part of the title. It is as much a muniment of title as covenants therein running with the land. The acceptance of a deed by a grantee makes its recitals evidence against him, and parol evidence is inadmissible to contradict or vary material recitals. Whenever the recitals of a patent nullify the granting clause, the grant fails." Citing *Penrose vs. Griffith*, 4 Bin. 231; *Improvement Co. vs. McCreary*, 58 Pa. St. 304; *Smelting Co. vs. Kemp*, 104 U. S. 636, 644.

Nor does the Compromise Act of 1898 aid the defendant in any way. On the contrary, whatever claim the State had to these lands was relinquished by that compromise. The compromise was made in 1895, approved, with the amendments proposed by Congress, by the General Assembly of the State of Arkansas on March 10, 1897, Session Acts of Arkansas 1897, p. 89, and for the United States by the Act of Congress of April 29, 1898, Section 3 of the Act of Congress upon which defendant relies, provides:

"That the title of all persons who have purchased from the State of Arkansas any unconfirmed swamp lands and holding deeds for the same be, and the same is hereby confirmed and made valid as against any claims or right of the United States, and without the payment by said persons, their heirs or assigns, of any sum whatever to the United States or to the State of Arkansas."

The compromise made by the United States and the State of Arkansas provided for a surrender by the Government to the State of its bonds, amounting, with the interest, to a very large sum of money, and as a consideration for the surrender of these bonds, the State relinquished and quit-claimed to the United States "all claims or demands, adjusted or unadjusted growing out of the Act of September 28, 1850, known as the Swamp Land Act, the Acts of March 2, 1855 and March 3, 1857 or any other Act."

It will thus be seen that the relinquishment of the claims on the part of the State to the swamp lands granted by the Act of 1850 as well as the Confirmation Act of 1857, or any other Act, was for a valuable consideration. When that compromise was concluded and approved by the State of Arkansas and the Act of Congress of 1898, the State, not only for itself, but for all its subordinate political subdivisions and subordinate agencies, of which the St. Francis Levee District was one, relinquished all claims 125 they or it may have had to any lands undisposed of. This was authoritatively settled by the Supreme Court in *Little vs. Williams*, *supra*. Mr. Justice Van Devanter, delivering the opinion of the court in that case, said:

"Assuming that the inchoate title (of the State) had then passed to the Levee District under the Act of 1893, was the District in any better situation [that] the State? The answer turns upon the relation of one to the other. The District was a mere political subdivision of the State \* \* \*. It was essentially a subordinate agency of the State, was exercising a power of the State for its convenience, could have no will contrary to the will of the State, held its property and revenue for public purposes, and was, in all respects, subject to the State's paramount authority. In view of this relation we are quite clear that the State's action was binding

upon the District, and that the latter could not by its subsequent deed to the plaintiff invest her with a title which it no longer possessed."

This was reaffirmed in *Chapman & Dewey Lumber Co. vs. St. Francis Levee District*, *supra*.

As none of these lands were conveyed by the Levee District, under whom the defendant now claims title, until after the enactment of the Act of 1898, nothing passed to the defendant under these conveyances.

As to the State's patent to Waldron, it is sufficient to say that if there was no lake or permanent body of water there, then the State's patent to Waldron did not convey any lands beyond the meander lines, even if an inchoate equitable title to these lands had passed to the State under the Swamp Land Act of 1850 and the Confirmation Act of 1857. If still in the State, or its political subdivisions, they were quit-claimed to the Government by the Compromise of 1898. But even if these lands had passed to Waldron by the State's patent, as they were forfeited to and again became the property of the State, and the defendant makes no claim except through the St. Francis Levee District, it cannot claim to hold under the Waldron patents, which had been, in effect, relinquished to the State by the forfeiture.

Aside from that, the State did not by its patents to Waldron attempt to convey any of these unsurveyed lands nor did it do so. The lands it conveyed were described in the patent as follows: "Fractional Section twenty-two, Township Twelve North, Range Nine east, containing 164.07 acres." Section Twenty-six is conveyed in one patent with Sections twenty-five, thirty-four and thirty-five of that township, and is described "Section twenty-six, Township Twelve North, Range Nine east." There is no separate description of the acreage of each section, but the four sections are stated to contain 2543.83 acres, as shown by the plat of the original survey." Sections twenty-five, thirty-four and thirty-five were full sections of 640 acres each, section twenty-six being the only fractional section conveyed by that patent. As will be seen from an inspection of the original plat the meandered lake covers only a very small, irregular part of section twenty-six, which accounts for the shortage of only 16.17 acres. In the survey of 1910 this small tract was found to contain 17.80 acres. This slight difference was probably caused by a less accurate survey in 1840. The patent of the State for section twenty-seven included also the north half of section thirty-six, and describes the lands conveyed as "north half of section thirty-six, and fractional section twenty-seven, township twelve north, range nine east, containing, in the aggregate, 613 acres." The north half of section thirty-six contains 320 acres, leaving the acreage of fractional section twenty-seven 293 acres, the exact amount of the surveyed lands of that section, thus showing that the State made no claim to any of the unsurveyed lands, and made no attempt to convey them to Waldron. The consideration paid the State by Waldron was fifty cents an acre for the surveyed lands.

Nor is the contention that the entries on the Government tract

books at Washington and Little Rock that, the whole of sections twenty-two, twenty-six and twenty-seven had been withdrawn from further entry and sale are an admission on the part of the Government that the entire sections of 640 acres each, surveyed and unsurveyed, had been selected and patented as swamp lands under the Act of 1850, tenable. These entries only meant that all of the lands in those sections which were "subject to disposal" had been granted to the State, and were, therefore, no longer subject to entry or sale. As unsurveyed lands never were subject to entry or sale, there was nothing to be withdrawn.

By Section 4 of the Act of 1898, the State of Arkansas "relinquished and quit-claimed to the United States all lands heretofore confirmed, certified or patented to the State, which have been entered under the public land laws; and does hereby cede, relinquish and quit-claim to the United States all right, title and interest under the Acts of September 28, 1850, March 2, 1855 and March 3, 1857, in and to all lands in the State which have been heretofore granted, confirmed, certified or patented by the United States under any other Acts, and the title to such lands is hereby confirmed in the grantees, their heirs, successors or assigns, anything in this Act or any other Act to the contrary notwithstanding."

After that Act had been passed, having been approved by the State in 1897, as shown by the Act of Congress, which recites that fact, the Levee District had no more title to these lands than if the Swamp Land Act had never been passed, and, of course, it could thereafter convey no title.

### The [Statute] of Limitations.

The defendant invokes the statute of limitations of Section 8 of the Act of March 3, 1891, Chap. 561, 26 Stat. 1099, U. S. Comp. St. 1901, p. 1521. That Act, in so far as it applies to this plea, reads:

"That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this Act, and suits to vacate and annul patent hereafter issued shall only be brought within six years after the date of the issuance of such patent."

Complete answers to this plea are:

1. That this is not an action to vacate or annul a patent heretofore granted by the government. The claim of the government is based solely on the fact that these lands being unsurveyed were not and could not have been selected by the State and no patent had ever [—] issued for them. Therefore, it is claimed, the title thereto had never passed out of the Government. *United States vs. Chandler-Dunbar Water Power Co.* 209 U. S. 447, earnestly relied on by counsel for the defendant, is based upon a state of facts entirely different from those established in this case, and, therefore, inapplicable. It was there held that the islands in controversy had passed to the State of Michigan upon its admission as a State by reason of being in a navigable stream, and if they had belonged to

the United States they would have passed as neglected fragments. These islands, the court found, "are little more than rocks, rising very slightly above the level of the water, and contained, respectively, a small fraction of an acre, and a little more than one acre. They were unsurveyed and of no apparent value." The court said:

"We cannot think that these provisions excepted such islands from the admitted transfer to the State of the bed of the streams surrounding them. If they did not then, whether the title remains in the State or passes to the defendant with the land conveyed by the patent, the bill must fail. The bed of the river could  
128 not be conveyed by the patent of the United States alone, but, if such is the law of the State, the bed will pass to the patentee by the help of that law, unless there is some special reason to the contrary to be found in cases like *Illinois Central R. R. Co. vs. Illinois*, 146 U. S. 387."

2. As the fraud, even if we assume mistake, [of] the original survey was not discovered by the department of the government charged by law with the management of public lands, until December, 1908, when the Secretary of the Interior made his findings as hereinbefore set out, and the motion for review of that decision was not disposed of until February 27, 1909, the statute did not begin to run until that time. The instructions for the survey were given by the General Land Office to the surveyors on March 15, 1910. The survey of these lands was begun on March 21, 1910 and completed April 9, 1910; the plat from the field notes of the surveyor approved by the Commissioner, who was ex-officio Surveyor General for Arkansas, on April 23, 1910; this action was instituted by filing the bill of complaint and causing process to be issued on August 4, 1911.

Considering the many steps necessary to be taken by the different officers of the General Land Office, and the time required for the Department of Justice, after the Land Department requested it to institute these proceedings, to familiarize itself with the facts necessary for the preparation of the bills, the Government acted in this matter with unusual celerity. The courts must take judicial notice of the rules and regulations of the departments of the Government, and also the fact that a Government as large as ours cannot move as rapidly as individuals unhampered by such rules and regulations.

The letter of the special agent, referred [to] by Secretary of the Interior Hitchcock in his letter of November 17, 1902, shows that the special agent acted in that matter on his own initiative and without authority from the Department. He merely expressed his opinion from what he had heard. His letter has not been introduced in evidence, but the letter of the Secretary of the Interior, which is in evidence, shows sufficiently what it contained. The Secretary says:

"A special agent of your office states in his report that in an interview with the officers of said Board (meaning the Levee Board) he heard that it claimed title to the lands in question under the Act of March 29, 1893 (the Act of the General Assembly of the State of

Arkansas granting all of its lands in that section of the State to the St. Francis Levee District) and also bases its claim upon letters from your office and from the Secretary of the Interior, declaring, in effect, that if the unsurveyed lands, known as the 'Sunk Lands,' were at the date of the township surveys covered by bodies of water, and were afterwards uncovered by the recession of the waters, such lands would belong to the owners of the adjacent lands as riparian proprietors, and the United States would have no authority to survey and dispose of them, assuming that the lands contiguous to and surrounding the meandered waters have been disposed of. The special agent expresses the opinion that there is no doubt that at the time of the township surveys these lands were simply covered by the overflow of the Mississippi River, and that they may be classed as agricultural lands, and not as covered by permanent bodies of water, and therefore subject to state or riparian ownership; that some of these lands are five miles wide and are covered with the finest timber, which is exceedingly valuable, and when cleared will make fine cotton and corn plantations and become some of the most valuable ones in the State."

Such a communication, made by a subordinate employee of the department, who is not even an officer of the United States, *United States vs. Schlierholz* (D. C.) 133 Fed. 333, and *United States vs. Schlierholz* (D. C.) 137 Fed. 616, without authority from the Department, and merely expressing his own opinion without having taken any evidence, or made any personal investigation upon which his opinion is based, can hardly be said to be notice to the Government, which can only act through its officers, and for that reason is not chargeable with notice as strictly as an individual. *United States vs. Kirkpatrick* 9 Wheat. 735; *Cooke vs. United States*, 91 U. S. 389, 398; *United States vs. Beebe*, 180 U. S. 343, 354.

Nor is the claim that, as that statute contains no exceptions, the general rule that in case of a concealed fraud, the statute of limitations does not begin to run until the discovery of the fraud, does not apply, tenable. That this statute does not begin to run until the discovery of the fraud has been conclusively determined by the Circuit Court of Appeals of this circuit in *United States vs. Exploration Co.* 203 Fed. 387, 121 C. C. A. 491; and *Moses vs. Long Bell Lumber Co.* 206 Fed. 51 — C. C. A. —.

### Bona Fide Purchaser.

It is also claimed that the defendant is a bona fide purchaser for value, and therefore within the provisions of Section 3 of the Compromise Act of 1898 hereinbefore set out.

130 The testimony of Mr. Wilson, under whom the defendant claims, shows that he is the owner of practically the entire capital stock of the defendant corporation, and, may, therefore, be said to be the corporation. He testified that he owns all the stock of the defendant corporation except what his wife and son and W. L. Harrison and some of the boys might own, a share that he gave them to hold office. He further testified that while he could not tell the exact number of shares owned by him, it was something

over ninety per cent. Some of the shares he gave to his children a few days before testifying. From this it is reasonable to presume that he and his donees, his wife and children, own 998 of the 1000 shares of the capital stock of the defendant corporation. The corporation was no doubt formed for the purpose of enabling him to carry on his very extensive interests without the danger of having them injuriously affected or destroyed in case of his death, he being a man well advanced in years. In any event, as he is the President of that corporation, and practically its owner, his knowledge is the knowledge of the corporation.

As the State never owned these lands, and it only attempted to convey the lands which it owned, i. e. "according to the official plats of survey of the said lands returned to the General Land office by the Surveyor General," and as by the Compromise Act of 1898 the St. Francis Levee District, under *whom* defendant claims title, had been divested of all right, title and interest, legal or equitable, it had nothing to convey, so far as these or any other unsurveyed lands are concerned after April 29, 1898, the date of the enactment of the Act of 1898, even though they were in fact swamp and overflowed lands and theretofore had been, under the Act of 1850, subject to selection by the State. All of these lands were purchased by Mr. Wilson sometime after the Compromise Act of 1898 had been enacted, which, as construed in *Little vs. Williams*, *supra*, and *Chapman & Dewey Lumber Co. vs. St. Francis Levee District*, *supra*, had been quit-claimed to the Government by the compromise.

The evidence shows that the Levee District sold the lands in Section 22 on June 6, 1898; those in Section 26 on June 3, 1898 and those in Section 27 on June 6, 1898, nearly two months after the passage of the Compromise Act of 1898. Whether the enactment of this Act caused these conveyances to be made so soon thereafter must be left to conjecture. But the [divestiture] of its title was then complete.

Mr. Wilson bought the lands in Section 22 on November 24, 1900 and September 23, 1902; those in Section 26 on June 3, 1898 and September 23, 1902, and those in Section 27 on November 24, 1900 and September 23, 1902. In addition to these facts his own testimony shows that before he purchased the lands he knew that the title was still in the Government. Referring to his testimony we find the following:

"Q. Did you have the title examined at the time you bought the interest of these gentlemen, far enough back to ascertain they had no title to the lands within the meander lines? A. I had the title examined and it showed that they had the title to the lands by the Levee Board title. Q. That is to say, their title, so far as representing any section as an entirety, was deraigned from the Levee Board? A. Yes sir. Q. There was no title so far as you know to any land within the meander line, which can be deraigned by an examination of the records of Mississippi County by a patent from the United States government? A. You mean the unsurveyed land? Q. Yes sir. A. No sir. Q. So that at the time [your] purchased from the St. Francis Levee Board or any of its grantees the lands which

purport to be included within the meander line, and when you purchased the lands which may be specifically described as fractional sections about the meander line, you knew that the title which you were acquiring did not emanate from the Government by its patent as unsurveyed lands? A. I knew that the unsurveyed lands had not been patented by the Government. Q. You acquired, did you Mr. Wilson, or, that is the defendant, acquired the title to all this land abutting on the meander line, whether described as fractional sections or whole sections? A. Yes sir. Q. And you now say that no part of the alleged shore line or the present meander line, bounds any part of the surveyed lands of which the title is in some other person besides this defendant company? A. No."

The court finds from the evidence that the defendant is not a bona fide purchaser without notice, and therefore is not entitled to protection as such, without deciding whether in view of the other findings, even had it been a bona fide purchaser without notice, that would have aided it.

### Estoppel.

The defendant also claims an estoppel on the part of the United States. There can be no doubt that in a suit in equity the claims of the Government appeal to the conscience of the chancellor with the same, but with no greater or less force, than those of private individuals under like circumstances, and they are determinable by the same rules and principles. *State of Iowa vs. Carr*, 191

132 Fed. 257, 112 C. C. A. 477, *Hemmer vs. United States*, 204

Fed. 898, — C. C. A. — and authorities there cited. It is equally well settled that the Government cannot be estopped by the unauthorized or fraudulent acts of its agents or officers, or their mistakes. *Hunner vs. United States*, 5 Pet. 173; *The Floyd Acceptances*, 7 Wall. 666; *Filor vs. United States*, 9 Wall. 45, 48; *Whitesides vs. United States*, 93 U. S. 247, 257; *Moses vs. United States*, 166 U. S. 571, 594, 595; *Pine River Logging & Imp. Co. vs. United States*, 186 U. S. 279, 291.

To cause an estoppel, the representations relied on must have been made with full knowledge of the facts by the party to be estopped, unless his ignorance was the result of gross negligence or otherwise involved gross culpability. *Henshaw vs. Bissell*, 18 Wall. 255, 271; *Brant vs. Iron Company* 93 U. S. 326, 336; *Farmers & Merchants Bank vs. Farwell*, 58 Fed. 633, 7 C. C. A. 391.

Another essential element of estoppel is that the party pleading it should have relied and acted upon the conduct of the other, and be induced to act or refrain from acting so that he will be substantially injured if the other party should be allowed to repudiate his actions. *Brant vs. Iron Company*, supra. *Ketchum vs. Duncan*, 96 U. S. 659, 666; *Bloomfield vs. Charter Oak Bank*, 121 U. S. 121, 131; *Comer vs. Felton*, 61 Fed. 731, 738, 10 C. C. A. 28, 35; *New York Life Ins. Co. vs. Slocumb*, 177 Fed. 842, 101 C. C. A. 56; *State Bank vs. Hawkeye Cold Dredging Co.*, 177 Fed. 164; *Rhodes vs. Cissel*, 82 Ark. 367.

There can be no estoppel by what was said or done by the Gov-



ernment officials prior to the compromise between the State and the United States in 1898, for up to that time it was wholly immaterial whether this land was a lake or whether it was merely swamp land. If it was a lake it passed to the State and its grantees by virtue of the riparian ownership; if it was dry land but subject to overflow, the inchoate and equitable title passed to the State under the Swamp Land Grant of 1850, and the Act of 1857, which could be perfected when the land was surveyed. *United States vs. Montana Mfg. Co.* 196 U. S. 573. But by the Compromise Act of 1898 the State relinquished all lands granted to it, whether patented or held by an inchoate and equitable title under these Acts, and then, for the first time since the passage of the Act of 1850, the United States again became the absolute owner of the legal and equitable title, which had been granted to the State and not sold by it. As the title to none of the unsurveyed lands had ever passed from the United States to the State or Arkansas, the legal title to these lands, 133 if not covered by a lake or a permanent body of water, never vested in the State as has been shown hereinbefore.

In *French-Glenn Live Stock Co. vs. Springer*, supra, it was contended that the land was bought in reliance upon the plats and patent which showed the meander line of the lake, but it was held that if there was in fact no lake, the grantee acquired no part of the meandered area.

As to the letters of the Department, they were in reply to inquiries made by different parties; they were no decisions but merely expressions of opinions as to the lands in controversy, based upon the facts as shown by the records of the Department. There was no contest before the Department as to these lands which called for a decision; there were no parties before it seeking an adjudication; there were no issues to be decided; no one had an opportunity to be heard. For this reason it was held in *Chapman & Dewey Land Co. vs. Bigelow*, 77 Ark. 338, 350, where similar lands were involved, that such "letters are of no binding force or effect upon any one, and that they were properly excluded by the trial court."

But even if these letters are admissible, nothing was said or done by any authorized official of the Government which would cause an estoppel. In 1892 Mr. Wilson wrote to the Commissioner of the General Land Office, asking how he could obtain title to the lands situated in lakes and bayous in Mississippi County. The Commissioner of the General Land Office, under date of January 13, 1893, replied:

"Where the lands or lots bordering upon the lakes have been entered or disposed of by the government in accordance with the official plats they are not subject to survey and disposal by the United States for the reason that they belong to the adjacent land owner."

This is one of the letters upon which defendant bases its plea of estoppel. On November 30, 1894, the Secretary of the Interior, Mr. Hoke Smith, advised the Commissioner of the General Land Office as follows:

"Assuming that the lands contiguous and surrounding the



meandered lakes have long since been disposed of, it would seem, under the authorities cited, that the Government has no jurisdiction over the same, and therefore no power to order or direct the survey, and you will so advise the surveyor of the Levee Board."

This letter was written in reply to an inquiry made by the Secretary of the St. Francis Levee Board, dated June 26, 1894, transmitting a letter from its Chief Engineer. In that letter the Chief Engineer stated that these lands were occupied by lakes which were not surveyed, and that by the numerous overflows since then those lakes have been filled, changing the general features of them to such an extent that the areas and depths of the lakes and swamps have been very much reduced, and surrounding the margins, forests and large timber now stand on the space then occupied by water; that in order to drain the lands in that basin and locate the levees these lakes must be drained; and he then states that he is informed that "the title to these unsurveyed lands yet remains in the government and that it donate these lands to the State or to the Levee Board to be expended in their drainage," and that they will ask Congress at its next session to donate these lands for that purpose; and in order to give an accurate description it will be necessary to survey them, and asked that such a survey be made.

In every one of the letters written by the Secretary of the Interior to the Commissioner of the General Land Office or to individuals inquiring about them, these lands are assumed by him and the Commissioner to have been covered by a permanent lake at the time the original survey was made, and there was no suspicion entertained by any of them that that survey was fraudulent or mistaken and that these lands were, in fact, not covered by lakes or any other bodies of water of a permanent nature. Secretary Hitchcock, in his letter of November 17, 1902, quotes from another letter of the Chief Engineer of the St. Francis Levee District of September 3, 1901, the following:

"If the general Government has no jurisdiction of these unsurveyed lands and does not claim any, and if a survey of them cannot therefore be made by the government, then it is the purpose of our Board to have them surveyed and sell them or quit-claim them and place them on our Levee Tax Books so that they may be taxed for levee purposes and pay their proportion towards the construction of levees and drains by which they have been and are being so greatly improved and benefited. If the general government will survey them so that we can tax them when parties buy them from the government or homestead them, then our purpose will be equally accomplished."

This clearly shows that at that time the Levee District did not consider these lands as belonging to it. The Secretary said:  
135 "Therefore, the condition existing at the date of the township surveys is the important fact to be ascertained in order to determine whether steps should be taken to prevent depreciations on these lands. The returns of the township surveys (referring to those made in 1839 and 1840) shows upon their face that what are now alleged to be unsurveyed portions of said townships,

were then actual bodies of water and were properly meandered as such. There is nothing in the report of the special agent, or any of the papers submitted therewith, to impeach these returns as to the physical conditions of land and water at that time \* \* \* The action of the Board of Directors of the St. Francis Levee District in exercising any control over said lands appears to have been prompted by the disclaimer of jurisdiction and authority over them by the Government as expressed in the letters of your [office] and of the department above referred to, and such disclaimer was based upon the information furnished by the records of your office which show that the authority and jurisdiction of the government over said lands was terminated by the approval of the surveys, and the sales of the land along the meandered lines. It does not appear from anything in the record whether the body of water that once covered the lands in question was navigable or not, but the result would be the same in either case \* \* \* It not being shown that said waters were not properly meandered, and the jurisdiction and control of the government over the lands in question having thus been terminated, the action of the Department of November, 30, 1894 (refusing a survey) is adhered to and no further or other action will be taken with reference to said lands."

The entire correspondence shows conclusively that what was said or done by the department officers was in ignorance of the true fact that these lands were not covered by a permanent body of water, and that there was no lake there. No official investigation had been made at the time; not until 1908 did the Secretary of the Interior upon information received, as to these lands, from parties who were anxious to acquire them as homesteads, take any steps to ascertain the true condition of these lands at the time the survey was made. For the purpose of ascertaining the true condition of these lands at that time, he set a day for a public hearing, at which, after notice to the parties in interest, representatives of all the different claimants appeared. After that hearing on December 12, 1908, he made the findings hereinbefore set out and ordered these lands

136 to be surveyed. The officials of the Land Department had, up to that time, the right to presume that the original survey was correct, and that these were submerged lands, as the field notes made by the surveyor and the plats made therefrom were, as is claimed by the defendant, prima facie evidence that the lands were as described in the field notes.

In the opinion of the court, the evidence fails to establish any authorized acts of any officer of the Department of the Interior which would justify sustaining the plea of estoppel, nor does the evidence justify a finding that the defendant, when it purchased these lands, relied and acted upon the conduct of the Land Department, and that by reason thereof it will be substantially injured if the Government should now be permitted to recover these lands from it.

The opinion is more lengthy than is necessary, as the same result might have been reached without passing upon all the issues raised and herein determined. But, as this is a test case on which a num-

ber of other actions in this court are depending, and as counsel for both parties ably argued every one of these questions, and asked the court to pass upon all of them, the court did so. In addition to these reasons, the court felt that, as owing to the magnitude of the interests involved, about 80,000 acres of land in all the actions, this cause will likely be appealed to a higher court, it would be best for all concerned that every material issue raised by the pleadings and insisted on in the argument should be decided by the trial court.

The plaintiff is the owner of the lands in controversy, and a decree in conformity with the prayer of the bill may be prepared and submitted to the court for its approval.

Filed in the District Court, on February 21, 1914.

137 & 138 Page 195 to transcript. Appendix 1 to Opinion 283 Equity.

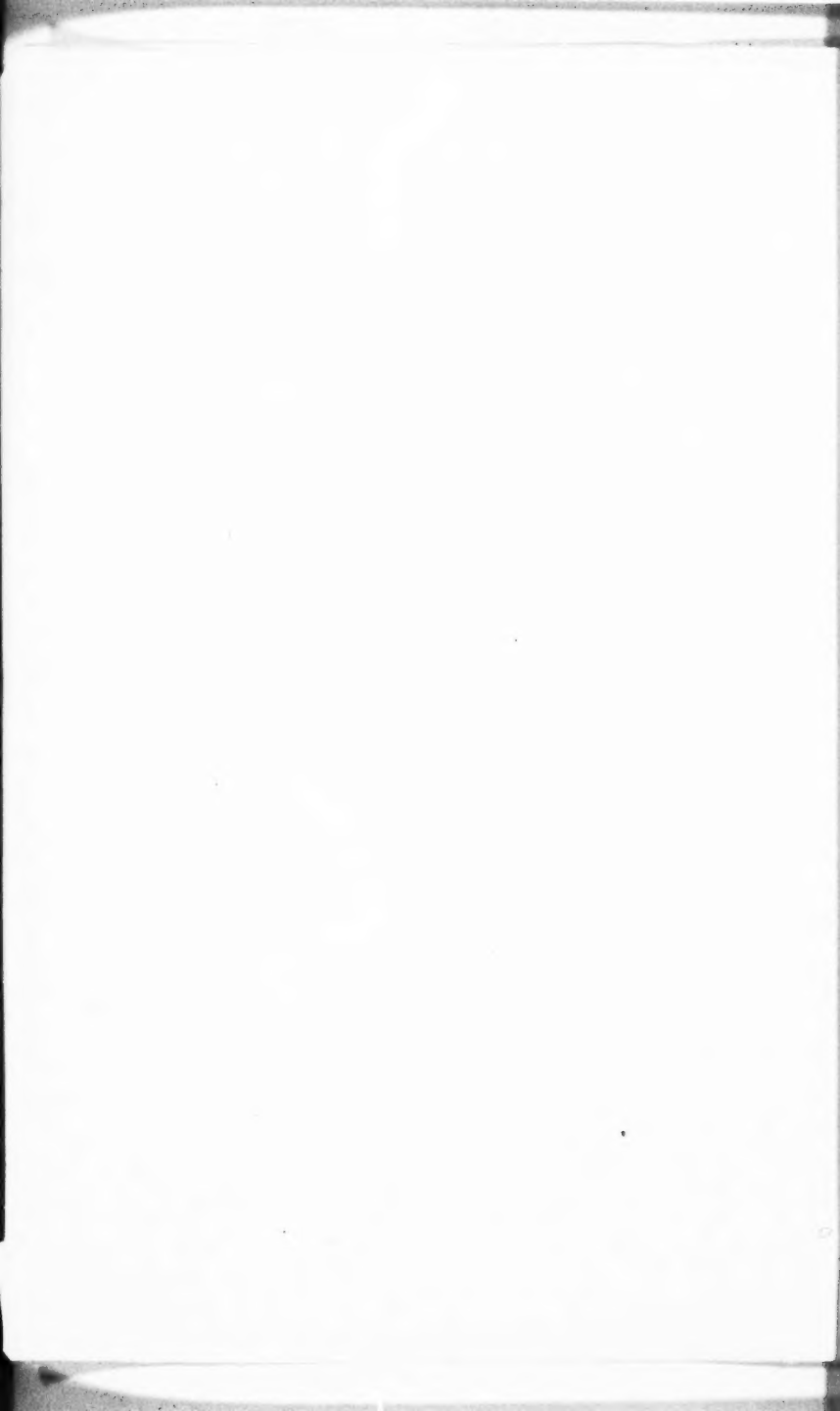
Filed Feb. 21, 1914, Sid. B. Redding, Clerk, by J. B. Connelly, D. C.

(Here follows map marked p. 137½.)

139 Page 196 to transcript. Appendix 2 to Opinion 283 Equity.

Filed Feb. 21, 1914, Sid. B. Redding, Clerk, by J. B. Connolly, D. C.

(Here follows map marked p. 139½.)



**CHART S**

**TOO**

**LARGE**

**FOR**

**FILMING**



140

*Decree, March 10, 1914.*

Second Day of March Term, 1914. Tuesday, March 10th, 1914.

**Decree.**

This case came on to be heard at the last term and was argued by counsel, and thereupon upon consideration thereof, it was ordered, adjudged and decreed by the Court as follows, to-wit:

That the plaintiff is the owner of and entitled to the possession of the following described lands, lying and situate in the County of Mississippi, State of Arkansas.

Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, the southeast quarter of the northwest quarter (S. E.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$ ), the southwest quarter of the northeast quarter (S. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ) the west half of the southeast quarter (W.  $\frac{1}{2}$  S. E.  $\frac{1}{4}$ ) and the east half of the southwest quarter (E.  $\frac{1}{2}$  S. W.  $\frac{1}{4}$ ), Section twenty-two (22); lots 1, 2, 3, 4, 5 and 6, the northwest quarter of the northeast quarter (N. W.  $\frac{1}{4}$  N. E.  $\frac{1}{4}$ ), the northeast quarter of the northwest quarter (N. E.  $\frac{1}{4}$  N. W.  $\frac{1}{4}$ ), and the south half of the northeast quarter (S.  $\frac{1}{2}$  N. E.  $\frac{1}{4}$ ) of Section twenty-seven (27); and that fractional part of the west half of the northwest quarter (W.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$ ) of Section twenty-six (26); included within the official survey of the United States approved April 23, 1910, all in Township Twelve (12) North, Range Nine (9) East of the 5th Principal Meridian.

That the defendant, its agents and attorneys, and all other persons claiming under it be forever enjoined from asserting any right title or interest in, or to said described lands, or any part thereof, or from creating any cloud upon the title thereof or committing any trespass thereon; or from interfering, directly or indirectly, with the peaceable possession and enjoyment of said described lands, or any part thereof, by qualified entrymen, lawfully claiming or asserting rights thereto under the plaintiff, in compliance with the Federal Statutes and rules and regulations of the General Land Office, relating to homestead entries; and that the title to said lands be and the same is hereby forever quieted and confirmed in the plaintiff.

It is further ordered that a duly certified copy of this decree be recorded in the office of the Recorder of Deeds in Mississippi County, Osceola District, State of Arkansas.

141 It is further decreed that the plaintiff do have and recover of and from the defendant all its costs herein expended, for which execution may issue as at law.

(Signed)

JACOB TRIEBER,  
*District Judge.*

*Order reciting the Filing of the Petition for Allowance of Appeal, Assignment of Errors, Bond on Appeal, Citation, and Allowance of Appeal.*

Second Day of March Term, 1914. Tuesday, March 10, 1914.

On this day comes the defendant, by its solicitors, Messrs. Coleman & Lewis, and file herein its Petition for Allowance of Appeal, Assignment of Errors, Bond on Appeal, and Citation, said Petition for Allowance of Appeal being endorsed, as follows: "Appeal allowed upon the execution of a bond in the sum of \$5000.00, conditioned as required by law, to act as supersedeas.

JACOB TRIEBER, *Judge.*"

*Petition for Allowance of Appeal.*

The above named defendant conceiving itself to be aggrieved by the order and decree made and entered in the above entitled cause on the 10th day of March, 1914, granting the relief prayed for in the bill and quieting the title in the complainant does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Eighth Judicial Circuit for the reasons specified in the assignment of errors filed herein, and it prays that this appeal may be allowed, and that a transcript of the record, papers and proceedings upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

COLEMAN & LEWIS,

*Solicitors for Defendant.*

Appeal allowed upon the execution of a bond in the sum of \$5000.00, conditioned as required by law, to act as supersedeas.

JACOB TRIEBER, *Judge.*

Endorsed: Filed in the District Court, on March 10, 1914.

*Assignment of Errors.*

Comes the defendant, by its solicitors, Coleman & Lewis, and files the following assignment of errors, upon which it would  
142 rely in the prosecution of its appeal from the decree made by this honorable court on the 10th day of March, 1914, in the above styled cause, to-wit:

1. The court erred in not dismissing the complainant's bill.
2. The court erred in holding that the title to the land in controversy was in the complainant.
3. The court erred in holding that the complainant had never parted with the title to the land in controversy.



4. The court erred in not holding that the title to the land in controversy passed from the United States to the State of Arkansas under the swamp land grant of September 28, 1850.

5. The court erred in not holding that the land in controversy was selected by the State of Arkansas under the swamp land grant.

6. The court erred in not holding that the title to the land in controversy was confirmed in the State of Arkansas by the Act of Congress, approved March 3, 1857.

7. The court erred in not holding that the title to the lands in controversy was conveyed from the United States to the State of Arkansas by the patent issued in 1858.

8. The court erred in not holding that the title to the lands in controversy rested in the State of Arkansas or in the defendant by the compromise between the United States and the State of Arkansas, which was made effective by the act of Congress of April 8, 1898.

9. The court erred in not holding that the title to the lands in controversy appeared on the records of the United States and of the State of Arkansas to be in the State of Arkansas, or in its grantees during the period of the negotiation of the compromise between the United States and the State of Arkansas, and at the date of the [consummation] of such compromise, and that the said compromise was entered into and made on the basis of the title being in the state or its grantees, so as to estop the United States from afterwards setting up title in itself.

10. The court erred in not holding that the officers of the United States charged with carrying out the compromise between it and the state construed the compromise as confirming the title in the state of its grantees and that such practical interpretation was binding on the courts.

113 11. The court erred in not holding that the complainant was estopped from [prosecuting] this action and from asserting title to the land in controversy as against the defendant.

12. The court erred in not holding that the title of the lands in controversy was in the defendant.

13. The court erred in not holding that the defendant was an innocent purchaser for value without notice of the complainant's claim, and therefore entitled to hold the land.

14. The court erred in not holding that the prima facie effect of the patent from the United States to the State of Arkansas was to convey the land in controversy.

15. The court erred in not holding that the prima facie effect of the selection made by the governor of the State of Arkansas was to include the lands in controversy.

16. The court erred in not holding that the present suit was barred by the five years statute of limitations pleaded in the answer.

17. The court erred in not holding that on the face of the pleadings there was no equity in the bill.

18. The court erred in not holding that the pleadings raised no issue of a mistake in the original government survey of 1840.

19. The court erred in not holding that the pleadings raised no

issue as to whether or not the area in controversy was a lake at the date of the original government survey, on September 28, 1850, or on the date that the land was selected by the state or on the date when it was patented by the United States to the State of Arkansas.

20. The court erred in not holding that the selection of the entire township in which the land in controversy was situated included the land in controversy.

21. The court erred in not holding that the patent from the United States to the State of Arkansas for the entire township in which the land in controversy was situated included the land in controversy.

22. The court erred in holding that the compromise between the United States and the State of Arkansas operated to relinquish the title to the land in controversy from the State of Arkansas, or from the St. Francis Levee District to the United States, and in holding that the compromise operated to vest or revest the title in the United States.

144 23. The court erred in holding that at the date of the compromise act, the St. Francis Levee District only held an inchoate title to the land in controversy.

24. The court erred in not holding that the State of Arkansas conveyed the land in controversy to Waldron, and in not holding that the title was confirmed in Waldron or those claiming under him by the compromise act of April 8, 1898.

25. The court erred in not holding that at the date of the compromise act, the title to the land in controversy was in the St. Francis Levee District, and in not holding that this title was confirmed in the levee district by the act of Congress of April 8, 1898.

26. The court erred in not requiring the complainant to do equity as a condition of relief by reimbursing the defendant for the sums paid by him in draining the said lands.

In order that the foregoing assignment of errors may be and appear of record, the defendant presents the same to the court, and prays that such disposition may be made thereof as in accordance with law, and the statute of the United States in such cases may be provided, and the defendant prays a reversal of the decree granting the relief prayed for in the bill in this cause, and prays that said court may be required to enter a decree dismissing the bill for want of equity.

COLEMAN & LEWIS,  
*Solicitors for Defendant.*

Endorsed: Filed in the District Court, on March 10, 1914.

*Bond on Appeal.*

Know all men by these presents, That we, Lee Wilson & Company, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto the United States of America, in the full and just sum of \$5000.00, to be paid to the United States of

America, to which payment and well and truly to be made, we bind ourselves and our [suc-essors], jointly and severally, by these presents.

Sealed with our seals and dated this 9th day of March, A. D. 1914.

Whereas, lately, of the March Term, 1914, of the District Court of the United States, for the Eastern Division of the Eastern District of Arkansas, sitting at Helena, in a suit pending in said court, between the United States, complainant, and Lee Wilson & Company, defendant, a decree was rendered against the said defendant, and the said defendant having prayed an appeal, the same being allowed, to the United States Circuit Court of Appeals for the Eighth Circuit, to reverse the decree of said Circuit Court, a citation directed to said respondent citing and admonishing it to be and appear in the United States Circuit Court of Appeal for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

Now, the condition of the above obligation is such that if the said defendant shall prosecute said appeal with effect, and answer all damages and costs if it fails to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

LEE WILSON & COMPANY,

By R. E. LEE WILSON, *Pres.*

[SEAL.] AMERICAN SURETY CO. OF NEW YORK,

By HERBERT F. SHARMAN,

*Resident Vice-President.*

Attest:

JOHN D. FRAZEE,

*Resident Ass't Secretary.*

Approved:

JACOB TRIEBER, *Judge.*

Endorsed: Filed in the District Court, on March 10, 1914.

(Citation.)

United States Circuit Court of Appeals.

United States of America, Eighth Judicial Circuit.

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

United States of America to United States, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the city of St. Louis, Missouri, sixty days from and after the date of this citation, pursuant to an appeal allowed by the District Court

of the United States for the Eastern division of the Eastern District  
 of Arkansas, sitting at Helena, wherein Lee Wilson & Com-  
 146 pany is appellant, and you are appellee, to show cause, if  
 any there be, why the decree rendered against the said ap-  
 pellant as in said appeal mentioned should not be corrected, and  
 why speedy justice should not be done the parties in that behalf.

Witness the Honorable Jacob Trieber, judge of the District Court  
 of the United States for the Eastern District of Arkansas, this 10th  
 day of March, 1914.

JACOB TRIEBER, *Judge.*

I acknowledge service of copy of above citation.

W. H. MARTIN,  
*U. S. Att'y, Solicitor for Appellee.*

Endorsed: Filed in the District Court on March 10, 1914.

*Order [Extending] Time for Preparing Transcript, etc.*

April 24, 1914.

Now on this day come the parties hereto by their respective  
 solicitors, and represent to the court that it will be impossible to  
 prepare and file the transcript on appeal within the time prescribed  
 by the rule in such cases made and provided.

It is therefore, ordered by the court, the parties hereto consenting,  
 that the time within which such transcript may be filed is hereby  
 extended for a period of ninety (90) days from this date.

It is further ordered, the parties hereto consenting thereto, that  
 the time within which the appellee is required to file its præcipe  
 with the Clerk of this Court be, and the same is, hereby extended  
 for a period of sixty (60) days from this date.

(Signed)

JACOB TRIEBER, *Judge.*

147

*Plaintiff's Cost Bill.*

Cost Bill.

Clerk's fees:

1911.

Aug.	4.	To filing complaint and two copies.....	.30
		“ record entry.....	.15
		“ issuing subpoena ad respondendum, and 4 copies .....	3.00
	8.	“ mailing copy of complaint to C. T. Coleman, Esq. ....	.25
		“ filing entry of appearance, and copy.....	.20
		“ record entry .....	.15
	26.	“ entered return and filing subpoena.....	.25
	30.	“ mailing copy complaint to Messrs. Norton & Hughes .....	.25

Oct.	2.	"	filing answer Ritter, et al., and copy.....	.20
		"	record entry .....	.15
		"	mailing copy to Wm. G. Whipple, Esq., U. S. Att'y.....	.25
	9.	"	filing answer Lee Wilson & Co.....	.10
		"	record entry .....	.15
	16.	"	filing replication to answer of Wilson.....	1.10
		"	record entry .....	.15
1912.				
Feb.	6.	To	filing stipulation.....	.10
		"	record entry .....	.15
Apr.	2.	"	entering order appointing Special Examiner (150) .....	.15
		"	filing same .....	.10
		"	issuing commission .....	1.00
		"	filing petition for appointment Sp'l Ex- aminer .....	.10
June	8.	"	filing stipulation to extend time for taking dep'ns .....	.10
		"	record entry .....	.15
		"	filing order granting extension of time.....	.10
		"	entering same, 101 words.....	.15
Sept.	17.	"	filing stipulation to extend time for taking dep'ns .....	.10
		"	record entry .....	.15
		"	filing order granting extension of time.....	.10
		"	entering same, 55 words.....	.15
Oct.	22.	"	" order relative to taking evidence...	.15
		"	filing same .....	.10
		"	" stipulation .....	.10
		"	entering order on same.....	.15
1913.				
Feb.	14.	"	entering order allowing Special Examiner his fees .....	.30
		"	filing same .....	.10
		"	two certified copies of same, under seal.....	1.10
Sept.	15.	"	entering order allowing Sp'l Examiner fees (166) .....	.30
		"	filing same .....	.10
Dec.	13.	"	filing 41 depositions, certificate of Examiner stipulation, commission, 162 exhibits.....	20.60
		"	entering order allowing Sp. Examiner fees (168) .....	.30
		"	filing same .....	.10
		"	certified copy of same, for Marshal.....	.55
1914.				
Jan.	16.	"	filing Exhibit No. 27.....	.10
	30.	"	entering order dismissing cause as to certain def'ts .....	.15
148		"	filing same .....	.10

Feb. 21.	" "	opinion and order.....	.20
	" "	entering order .....	.15
Mar 10.	" "	decree, 439 words.....	.60
	" "	certified copy of decree for recording.....	.75
	" "	filing decree .....	.10
	" "	docket, index, etc.....	3.00

Total, Clerk's fees, Helena..... \$37.35

Clerk's fees, at Little Rock Court:

Oct. 12-21.	To	filing eight praecipes for [subpoenas], @ 10c.	.80
	"	issuing 9 [subpoenas], @ 50c. and.....	.xx
	"	entering return and filing.....	4.50
	"	issuing 15 certificates of discharge.....	7.50
	"	issuing 32 certified copies of [subpoenas] @ 55c. ....	12.10

Total, Clerk's fees ..... \$62.25

Witnesses:

T. C. Ferguson, 1 mile N.	Marie, Ark....	\$21.90
Alex. Savage,	Osceola .....	21.90
S. E. Feild,	Marie .....	21.90
A. W. Walker,	Osceola .....	23.00
C. B. Manchester, 6 mi. W.	Osceola .....	23.60
W. J. Boyle,	Osceola .....	23.00
C. E. Harrell,	Carson .....	21.20
L. R. Simpson, 5 mi. S.	Wilson .....	22.40
D. R. Pittman,	Carson .....	23.70
W. F. Meadows,	Osceola .....	24.50
S. Roberts,	Marie .....	23.90
Deverix Lawrence,	Archillon .....	21.20
Geo. M. Linkwater, 2 mi. N. W.	Marie .....	24.10
C. J. Evard,	Blytheville ...	30.00
Henry C. Combs,	Chicago, Ill....	288.39

Total witness fees..... \$614.69

Clerk .....	62.25
Marshal .....	40.57
Witnesses .....	614.69
Special Examiner .....	1231.05
Docket fee on dep'ns (41).....	102.50
Att'ys docket fee.....	20.00
Recording deed .....	.xx*

Total..... \$2071.06

Helena, Arkansas, March 23, 1914.

Correct:

SID B. REDDING, *Clerk*,

By J. B. CONNOLLY, *D. C.*

UNITED STATES OF AMERICA,

*Eastern Division, Eastern District of Arkansas:*

I, Sid. B. Redding, Clerk of the District Court of the United States, in and for the Eastern District of Arkansas, in the Eighth Circuit, hereby certify that the foregoing two hundred and eight pages, numbered from 1 to 208, inclusive, contain a true and compared copy of the record, the Assignment of Errors and all proceedings in the cause wherein the United States of America is Complainant, and Lee Wilson & Company, is defendant, as shown in Appellant's and Appellee's praecipes, except Defendant's Exhibit 6, and Plaintiff's Exhibits "A," "H" and "U," all of which are of record or on file in my office at Helena, Arkansas, in the Eastern Division of the Eastern District of Arkansas.

I further certify that in accordance with stipulation between the respective parties, filed in this cause, I have caused to be transmitted to the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, at St. Louis, Missouri, the following original depositions and exhibits: (Volumes 1 to 18, inclusive) Depositions of E. D. Standard, G. W. Caron, Wm. J. Boen, Charlie B. Manchester, Alexander W. Walker, Lewis R. Simpson, Daniel Robert Pitman, Charley Harrell, William F. Meadows, Strausther Roberts, Matthew Chambers, Hampton D. Lawrence, George M. Linxwiler, C. J. Evrard, O. W. Gauss, Dennis M. Rushing, Curtis J. Little, Dr. Henry Cowles, Lester L. Clement, Lacy Baynes, Charles H. Miller, Lionel L. Janes, Edwin H. Van Antwerp, T. C. Ferguson, S. E. Simonson, Alexis Albert Woods, Arthur E. Morgan, W. P. Hale, William J. Newton, B. G. Covington, John B. Richardson, J. A. Hector, J. A. Merrell, C. C. Chambers, Willis E. Ayres, H. B. Kittle, Walter L. Gray, R. E. Lee Wilson, Frank D. Brown, W. T. Payne, and Eugene Wesley Shaw; and the following exhibits: Plaintiff's Exhibits, "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "M," "N," "O," "P," (Exhibit "P" is photographs "P-1" to "P-14" and "P-16" to "P-36"; "P-15" was destroyed in making) "Q," "R," "S," "T," "U," "V," "W," "X," "Y," "Z," "AA," "BB," "CC," "DD," Exhibits to Defendant's Answer "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," "M," "N," "O," "P," "Q," "R," "S," "T," "U," "V," "W," "X," "Y," "Z," "AA," "BB," "CC," "DD," "EE," "FF," "GG"; also [Defendants Exhibits] "1," "2," "4," "5," "7," "8," "9," "10," "11," "12," "13," "14," "15," "16," "17," "18," "19," "20," "21," "22," "23," "24," "25," "26," "27," "28," and "3-A," "3-B," "3-C," "3-D," "3-E," ["3-D," "3-E"] "3-F," "3-G," "3-H," "3-I," "3-J," "3-K," "3-L," "3-M," "3-N."

In Witness Whereof, I have hereunto set my hand and the seal of said District Court, this the 14th day of July, in the year of our Lord, One Thousand Nine Hundred and Fourteen, and of the Inde-

pendence of the United States of America, the One Hundred and Thirty-Ninth.

[Seal U. S. Court, Eastern Dist. of Arkansas, Helena.]

SID. B. REDDING, *Clerk.*

Filed Jul- 24, 1914. John D. Jordan, Clerk.

151 And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

*(Appearance of Counsel for Appellant.)*

United States Circuit Court of Appeals, Eighth Circuit.

No. 4278.

LEE WILSON & Co., Appellant,

vs.

UNITED STATES.

The Clerk will enter my appearance as Counsel for the Appellant.

WM. M. LEWIS,  
CHARLES T. COLEMAN,  
*Little Rock, Ark.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 13, 1914.

*(Appearance of Mr. William H. Martin as Counsel for Appellee.)*

The Clerk will enter my appearance as Counsel for the Appellee.

WILLIAM H. MARTIN,  
*United States Attorney.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 20, 1914.

*(Appearance of Mr. W. N. Mills, as Counsel for Appellee.)*

The Clerk will enter my appearance as Counsel for the Appellee.

W. N. MILLS,  
*Washington, D. C., Dept. of Justice.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Nov. 21, 1914.



152 (*Appearance of Mr. J. A. Tellier as Counsel for Appellee.*)

The Clerk will enter my appearance as Counsel for the Appellee.

J. A. TELLIER,  
*Special Assistant to the Attorney General,*  
*Little Rock, Arkansas,*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Mar. 11, 1915.

(*Order of Submission.*)

May Term, 1915.

Wednesday, May 12, 1915.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Charles T. Coleman for appellant, continued by Mr. W. N. Mills for appellee and by Mr. Charles T. Coleman for appellant and concluded by Mr. Henry D. Ashley as amicus curiæ.

Thereupon, this cause was submitted to the Court on the transcript of record from said District Court and the briefs of counsel and of the amicus curiæ filed herein.

153 (*Opinion.*)

United States Circuit Court of Appeals, Eighth Circuit, September Term, A. D. 1915.

No. 4278.

LEE WILSON & COMPANY, Appellant,  
*vs.*  
UNITED STATES OF AMERICA, Appellee.

Appeal from the District Court of the United States for the Eastern District of Arkansas.

Mr. Charles T. Coleman (Mr. M. Lewis was with him on the brief), for appellant.

Mr. Henry D. Ashley for amicus curiæ, orally and by brief.

Mr. W. N. Mills, Special Assistant to the Attorney General (Mr. W. H. Martin, U. S. Attorney, and Mr. J. A. Tellier, Special Assistant to the Attorney General, were with him on the brief), for appellee.

Before Sanborn and Carland, Circuit Judges, and Lewis, District Judge.

CARLAND, *Circuit Judge*, delivered the opinion of the Court:

A correct decision of the issues involved in this case is of the greatest importance. We think the case is mainly ruled by *Little v. Wil-*

liams, 231 U. S. 335; Chapman & Dewey Lumber Co. v. St. Francis Levee District, 232 U. S. 186, 234 U. S. 667; Security Land & Exploration Co. v. Burns, 193 U. S., 167; French Glenn Live Stock Co. v. Springs, 185 U. S. 452; Niles v. Cedar Point Club, 175 U. S. 300.

The bill was filed to quiet title to one body of land containing 853.6 acres, composing parts of section 22, 26 and 27, in township 12 north, range 9 east, in Mississippi County, Arkansas.

Three individuals were joined with appellant as defendants below, but they disclaim. The lands became a part of the public domain in 1803 by acquisition from the French Republic, and of course remained such unless the government had parted with its title. The appellant claims that it had done so and that title thereto is now vested in it. It puts forth several reasons to sustain this claim; and those reasons are these:

1. That by virtue of the provisions of the Act of September 28, 1850 (9 Stat. 519), and the procedure therein authorized, which was regularly taken, title to said lands passed to the State of Arkansas and thereafter that title became vested in appellant.

The facts relative to that claim are these: In 1839 and 1840 the township (township 12) was surveyed and established, and thereafter in 1841 the subdivisional lines were located and the township sectionized; that after the passage of the Swamp Land Act, supra, and in 1853 the state selected the entire township, as authorized by the Act, and thereafter and on the 27th day of September, 1858, all of said township was conveyed by patent to the state. The survey of 1841 meandered the lands in controversy as being a lake. The notes of the survey report the lake and also a bayou, as its outlet to the southwest, as navigable. The lands were platted in accordance with the survey showing the lake as meandered. It may be conceded that the selection as made by the Governor of the State was of the entire township and that if the description in the patent had corresponded with the terms of the selection, the lands in controversy, which were represented as being then covered by the lake, would have passed under the patent. The description in the selection is in these words:

Parts of sections	Section	Town- ship	Range	Surveyed area		Unsurveyed area		Total area	
				Acres	Hdths	Acres	Hdths	Acres	Hdths
Township		12	9	(Except Section 16)				14,565.03	

But when the patent was issued some five years later the description therein given is this: "Township twelve (12) north, range nine (9) east. The whole of the township except Section Sixteen (16), containing fourteen thousand five hundred sixty-five acres and three-hundredths of an acre, according to the official plats of survey of the said lands returned to the General Land Office, by the Surveyor General."

And the patent with the lands thus described having been received

and accepted by the state, rendered the terms used in describing the lands in the selection irrelevant and immaterial in thereafter determining what lands passed by the patent; so the terms of the selection may be omitted from further consideration. Looking then to the patent it follows that the lands which were meandered out and shown upon the plat as a lake did not pass under the patent unless the lake did in fact exist. *Little v. Williams*, 231 U. S. 335; *Lumber Co. v. District*, 232 U. S. 186.

The trial court held that a preponderance of the evidence went strongly to establish that the lands were not submerged lands and that there was not a lake as shown upon the plat at the time of the survey; that no depression can be noticed in the meandered area, and that there is no appreciable difference in the elevation between the lands on the two sides of the meander line. He further found that there is now a heavy growth of large, living trees on the lands; that there was testimony that many of the trees were over seventy and some over two hundred years old, and that they could not have grown on submerged lands; and says that he "is convinced beyond a reasonable doubt that there was no permanent body of water on the land meandered at the time the original survey was made, nor for a long period before that time, nor at the time of the passage of the Act of 1850, or at the time the state made its selection."

The trial court also called attention to the fact that the Secretary of the Interior in 1908, after a hearing of a controversy between parties who desired to acquire the lands in controversy as homesteads, and others who claimed as riparian owners, made a like finding to the effect that the lands were not covered by a permanent body of water at the time of the original survey or at the time of the enactment of the Swamp Land Act, or when the state made its selection. It therefore seems to be conclusively established that the lands did not pass under the patent of September 27, 1858.

2. The appellant further contends that the state acquired title to the lands under an Act of May 2, 1898 (30 Stat. 367), approving a compromise which had theretofore been authorized and made between the United States and Arkansas of a long-existing controversy concerning swamp and overflow lands and the title thereto. That Act provided: "That the title of all persons who have purchased from the State of Arkansas any unconfirmed swamp land and hold deeds for the same be, and the same is hereby, confirmed and made valid as against any claim or right of the United States."

Between the time that the state made its selection of township 12, as is claimed, and the time that it received the patent dated in September, 1858, one William B. Waldron made application to the Commissioner of State Lands to purchase "Frl. Sec. 22 T. 12 N. R. 9 E., 164.12 acres, Frl. Section 26, T. 12 N. R. 9 E., 623.83 acres," and "Frl. Section 27 T. 12 N. R. 9 E., 291.98 acres," and he was permitted to enter the same as swamp and overflowed lands. Thereafter and in 1859 the state issued its patent conveying to Waldron all of said lands for which he applied and described therein

in the same way as fractional sections. The patents to Waldron therefore did not purport to convey any of the lands which had been meandered out as the lake, and as there was no lake, the meandered area could not pass as riparian to the fractional sections. It therefore cannot be said that the transaction between Waldron and the state in his purchase of the lands came within the contemplation of the Act of 1898. He applied only for the fractional sections and the fractional sections were conveyed to him. The meander line therefore constituted one of his boundary lines beyond which he could not go (185 U. S. 47; 232 U. S. 186).

Waldron and his grantees lost title which they obtained through Waldron's patent from the state to the fractional sections by decrees and sales for overdue and unpaid taxes, and the state became the purchaser at those sales and was thereby reinvested with the title which it had patented to Waldron. These conveyances back to the state occurred as to the different tracts between 1883 and 1888, and thereafter in March, 1893, the state conveyed to the St. Francis Levee District, and thereafter in 1894 the Levee District obtained a decree of the Chancery Court confirming in it title to all of sections 22, 26, and 27, which, of course, includes the lands in controversy. Thereafter the Levee District attempted to pass title thus confirmed in it to all of said sections to its several grantees, and by mesne conveyances such purported title passed to appellant. From

157 1900 to 1910 special levies were made by the District upon all of the lands in all three sections for drainage purposes, and they had been paid for each of those years by their purported owners, including the appellant. The same is true, we think, as to general taxes for state and county purposes. On these facts appellant again invokes the Act of May 2, 1898, and also an estoppel against the appellee, but we see nothing in the title thus acquired by the state under the tax sales which would make the Compromise Act applicable to that situation. The only selection of swamp lands made in township 12 by the state is the one above referred to and made in 1853, but the state did not stand on the terms of that selection as made. It accepted the patent of September 27, 1858, with the lands otherwise described, which we think must be taken as a modification of the terms of its selection and as adopting for that purpose the description in the patent itself. It therefore cannot be said that at the time of the passage of the Act of May 2, 1898, the state had pending any unconfirmed selection of swamp and overflowed lands in township 12, so far as anything appears from the record.

3. As above noted, appellant relies also on the claim of estoppel and that it is a bona fide purchaser. The facts in both of those respects are sufficiently stated and discussed in the opinion of Judge Trieber (214 Fed. 630) and in which opinion in relation thereto we concur.

Decree affirmed.

Filed November 4, 1915.

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(Decree.)

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1915.

Thursday, November 4, 1915.

No. 4278.

LEE WILSON AND COMPANY, Appellant,

vs.

UNITED STATES OF AMERICA.

Appeal from the District Court of the United States for the Eastern District of Arkansas.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Arkansas, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed without costs to either party in this Court.

November 4, 1915.

*(Petition of Lee Wilson and Company for Allowance of Appeal to Supreme Court U. S.)*

The above named appellant, Lee Wilson & Company, respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Eighth Circuit, and that a judgment has herein been rendered on November 4, 1915, affirming the decree of the District Court of the United States for the Eastern Division of the Eastern District of Arkansas, and that the matter in controversy in said suit exceeds One Thousand (\$1000.00) Dollars besides costs; that this case is one in which the United States Circuit Court of Appeals for the Eighth Circuit has not final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the said appellant prays that an appeal be allowed *him* in the above entitled cause directing the clerk of the United States Circuit Court of Appeals for the Eighth Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellant may be reviewed, and if error be found correct it according to the laws and customs of the United States.

CHAS. T. COLEMAN,  
*Solicitor for Appellant.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 2, 1916.

*(Assignment of Errors on Appeal to Supreme Court, U. S.)*

Comes the appellant, Lee Wilson & Company, by Charles T. Coleman, its solicitor, and says that in the record and proceedings herein, there is manifest error, and that the United States Circuit Court of Appeals for the Eighth Circuit erred in this, to-wit:

First. In holding that the title to the land in controversy is in the United States.

Second. In holding that the United States had never parted with the title to the land in controversy.

Third. In not holding that the title to the land in controversy passed from the United States to the State of Arkansas under the swamp land grant of September 28, 1850.

Fourth. In not holding that the land in controversy was selected by the State of Arkansas under the swamp land grant.

Fifth. In not holding that the title to the land in controversy was confirmed in the State of Arkansas by the act of congress, approved March 3, 1857.

Sixth. In holding that the acceptance of the patent which contained a different description from that in the selection, rendered the terms used in describing the lands in the selection irrelevant and immaterial.

160 Seventh. In holding that the state did not stand on the terms of the selection as made by it, and that the acceptance of the patent of September 27, 1858, constituted a modification of the terms of the selection, and an adoption of the description in the patent itself.

Eighth. In holding, in effect, that the title which the state acquired by the selection, as confirmed by the act of Congress of March 3, 1857, was surrendered or re-conveyed to the United States by the acceptance of the patent which was subsequently issued.

Ninth. In not holding that the title to the lands in controversy was conveyed from the United States to the State of Arkansas by the patent issued in 1858.

Tenth. In not holding that the title to land in controversy vested in the State of Arkansas, or in the appellant, by the compromise between the United States and the State of Arkansas, which was made effective by the Act of Congress of April 8, 1898.

Eleventh. In not holding that the title to the land in controversy appeared on the records of the United States and of the State of Arkansas to be in the State of Arkansas, or in its grantees, during the period of the negotiation of the compromise between the United States and the State of Arkansas, and at the date of the consummation of such compromise, and that the compromise was entered into and made on the basis of the title being in the state, or in its grantees, so as to estop the United States from afterwards setting up title in itself.

Twelfth. In not holding that the officers of the United States charged with the duty of carrying out the compromise between it and the state construed the compromise as confirming the title

in the state or in its grantees, and that such practical interpretation is binding on the courts.

Thirteenth. In not holding that the United States is estopped from prosecuting this action, and from asserting title to the lands in controversy as against the appellant.

161 Fourteenth. In not holding that the title to the lands in controversy is in the appellant.

Fifteenth. In not holding that the state conveyed the lands in controversy to William B. Waldron, and that the title passed by mesne conveyances from William B. Waldron to the appellant.

Sixteenth. In not holding that the appellant was an innocent purchaser for value without notice of the claim of the United States, and that as such it is entitled to hold the land.

Seventeenth. In not holding that the prima facie effect of the patent from the United States to the State of Arkansas was to convey the land in controversy to the state.

Eighteenth. In not holding that the present suit is barred by the five years statute of limitation pleaded in the answer.

Nineteenth. In not holding that on the face of the pleading there is no equity in the bill.

Twentieth. In not holding that the pleadings raised no issue of a mistake in the original government survey.

Twenty-first. In not holding that the pleadings raised no issue as to whether or not the area in controversy was a lake at the date of the original government survey, or on September 28, 1850, or on the date when the land was selected by the state, or on the date when it was patented by the United States to the State of Arkansas.

Twenty-second. In not holding that the selection of the entire township in which the land in controversy is situated included the land in controversy.

Twenty-third. In not holding that the patent from the United States to the State of Arkansas to the entire township in which the land in controversy is situated included the land in controversy.

Twenty-fourth. In holding that the compromise between the United States and the State of Arkansas operated to relinquish the title to the land in controversy from the State of Arkansas or from the St. Francis Levee District to the United States,

162 and in holding that the compromise operated to vest or re-vest title in the United States.

Twenty-fifth. In holding that at the date of the compromise act, the St. Francis Levee District only held an inchoate title to the land in controversy.

Twenty-sixth. In holding that the St. Francis Levee District was a mere subordinate agency of the State of Arkansas, and that the compromise between the United States and the State of Arkansas had the effect of relinquishing the title held by the St. Francis Levee District to the United States.

Twenty-seventh. In not holding that at the date of the compromise act, the title to the land in controversy was in the St. Francis Levee District, and in not holding that this title was confirmed in the levee district by the act of Congress, April 8, 1898.

Twenty-eighth. In not requiring the United States to do equity by reimbursing the appellant for the sums paid by him in draining, leveeing and reclaiming the land-, and in rendering them valuable, as a condition of relief to the United States.

Twenty-ninth. In not reversing the decree of the district court, and in not rendering a decree awarding the lands in controversy to appellant.

Thirtieth. In affirming the decree of the district court in favor of the appellee.

Wherefore, the appellant prays that said judgment and decree of the said Circuit Court of Appeals may be reversed in all things.

CHAS. T. COLEMAN,  
*Solicitor for Appellant.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 2, 1916.

163 (*Bond on Appeal to the Supreme Court U. S.*)

Know all men by these presents, that we, Lee Wilson & Company, as principal, and The American Surety Company of New York, as surety, are held and firmly bound unto the United States of America, in the full and just sum of One Thousand (\$1000.00) Dollars, to the payment of which well and truly to be made, we bind ourselves and our successors, jointly and severally, by these presents.

Sealed with our seals and dated this the 25 day of January, 1916.

Whereas, the appellant in the above entitled suit *had* prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Eighth Circuit on the 4th day of November, 1915;

Now, therefore, the condition of this obligation is such that if the said appellant shall pay all the costs adjudged against it on said appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

[SEAL.]

LEE WILSON & COMPANY,  
By R. E. LEE WILSON, *President.*  
AMERICAN SURETY COMPANY  
OF NEW YORK,  
By HERBERT F. SHARMAN,  
*Resident Vice-President.*

Attest:

JOHN D. FRAZEE,  
*Resident Ass't Secretary.*

Countersigned

F. A. GILLETTE, *Agent.*

Approved February 2, 1916.

WALTER H. SANBORN,  
*Presiding Judge, U. S. Circuit Court of  
Appeals, Eighth Circuit.*



164 Attached to this bond is a printed "Extract from Record Book of the Board of Trustees of American Surety Co. of New York" and also a printed "Financial Statement, June 30, 1915," of said Company, which are omitted from the transcript in this cause.

The "Extract from Record Book" shows the election of Herbert F. Sharman of Memphis, Tennessee, as a Resident Vice President with authority to execute bonds.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 2, 1916.

*(Stipulation as to Amount in Controversy.)*

It is hereby stipulated that this cause involves the title to 853.6 acres of land in Mississippi county, Arkansas; that the market value of said land exceeds \$10.00 per acre; and that the amount or value in controversy exceeds the sum of \$5000.00, exclusive of interest and costs.

CHAS. T. COLEMAN,  
*Solicitor for Appellant.*

W. H. MARTIN,  
*United States District Attorney, for Appellee.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 2, 1916.

*(Order Allowing an Appeal to the Supreme Court U. S.)*

It is hereby ordered that the appeal in the above entitled cause to the Supreme Court of the United States be and the same is hereby allowed as prayed.

WALTER H. SANBORN,  
*Presiding United States Circuit Judge,*  
*Eighth Circuit.*

Dated February 2, 1916.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 2, 1916.

165 United States Circuit Court of Appeals for the Eighth Circuit.

*Citation.*

United States of America to the United States of America:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, in the District of Columbia, thirty days after the date of this citation,

pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein Lee Wilson & Company is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf.

Witness the Honorable Walter H. Sanborn, Presiding Judge of the Circuit Court of Appeals for the Eighth Circuit, this 2nd day of February, A. D., 1916.

WALTER H. SANBORN,  
*Presiding Judge United States Circuit  
Court of Appeals, Eighth Circuit.*

Service of the above citation is accepted and hereby acknowledged, on this the 18th day of February, 1916.

W. H. MARTIN,  
*United States District Attorney.*

166 [Endorsed:] In the Supreme Court of the United States, October Term, 1915. No. —. Lee Wilson and Company. Appellant, vs. United States of America. Citation on Appeal. Filed Feb. 21, 1916. John D. Jordan, Clerk.

167 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Arkansas as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Lee Wilson & Company is Appellant and the United States is Appellee, No. 4278, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acceptance of service endorsed thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth

Circuit, at office in the City of St. Louis, Missouri, this twenty-first day of February, A. D. 1916.

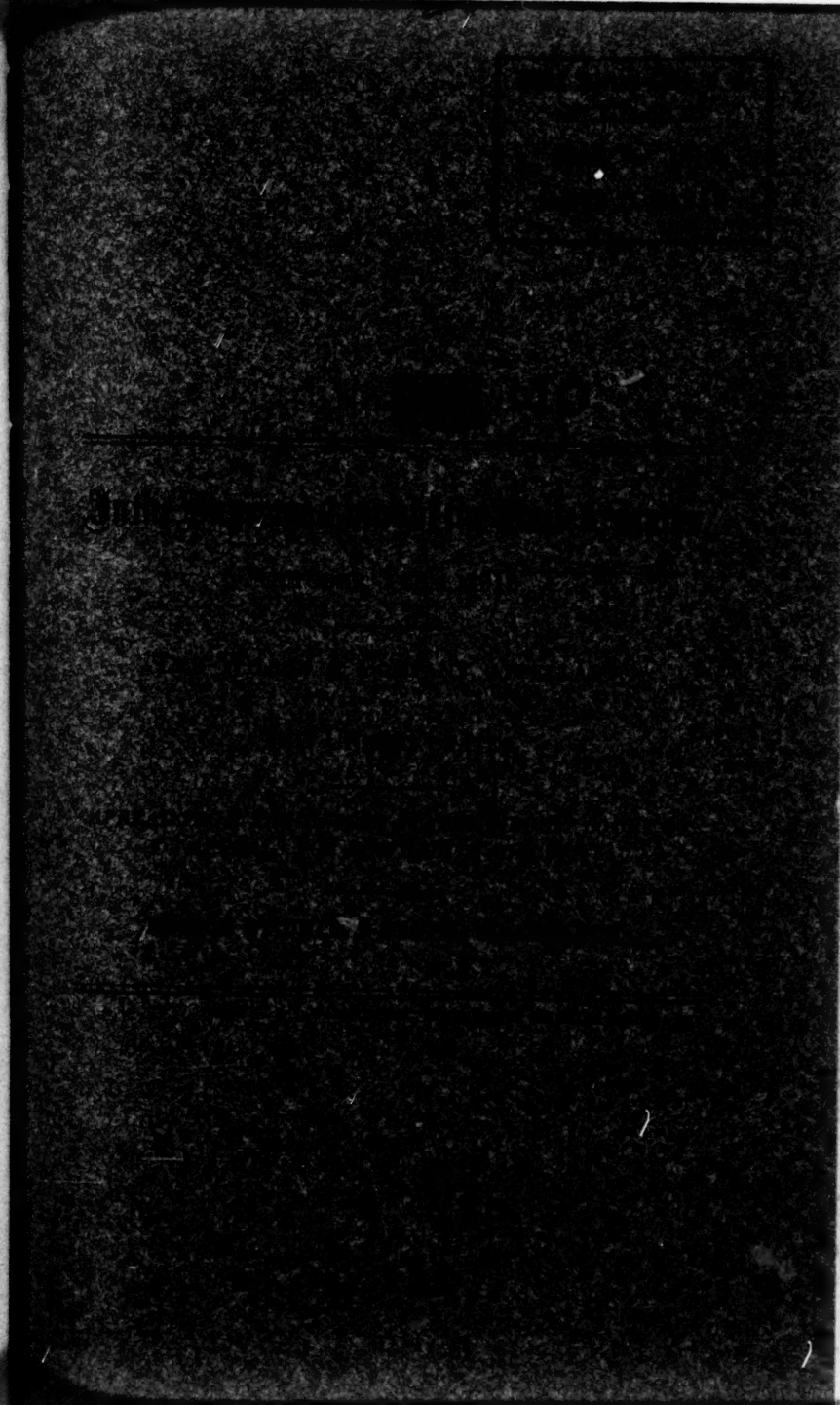
[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,  
*Clerk of the United States Circuit Court  
of Appeals for the Eighth Circuit.*

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled Feb. 21, 1916. John D. Jordan.]

Endorsed on cover: File No. 25,157. U. S. Circuit Court Appeals, 8th Circuit. Term No. 393. Lee Wilson & Company, appellant, vs. The United States. Filed February 28th, 1916. File No. 25,157.





# In the Supreme Court of the United States.

OCTOBER TERM, 1916.

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LEE WILSON & COMPANY, APPELLANT,	} No. 393.
v.	
THE UNITED STATES.	

---

*APPEAL FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT.*

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## **MOTION BY THE UNITED STATES TO ADVANCE.**

Now comes the Solicitor General on behalf of the United States and respectfully moves that the above-entitled cause be advanced for hearing at the opening of the next term of the court.

The case involves the title to some 800 acres of land forming a part of the so-called "sunk lands" in the State of Arkansas. When the public-land surveys were made in 1841 the area in question was represented as water and designated on the plats as "Moon Lake." A few years ago the Secretary of the Interior, after investigation, found that the area in question was land and not water and that it had been erroneously omitted from the original survey, and he accordingly ordered a re-survey of the township in which the alleged lake was situated.

The fractional subdivisions represented by the original survey as abutting on the so-called lake were patented to the State of Arkansas under the Swamp Land Grant, and the appellant having purchased those subdivisions from the State, the Government instituted this suit to quiet its title.

The District Court found that the *locus in quo* was land and not water at the time of the original survey and entered a decree quieting title in the United States. On appeal this decree was affirmed by the Circuit Court of Appeals for the Eighth Circuit.

An early settlement of the questions is highly desirable for the reason that a number of other suits relating to lands similarly situated are now pending in the lower courts, the entire area involved in pending and proposed litigation aggregating many thousands of acres.

Counsel for the appellant concurs in the motion to advance.

JOHN W. DAVIS,  
*Solicitor General.*


MARCH, 1917.



Office Supreme Court, U. S.  
FILED  
DEC 14 1916  
JAMES D. MAHER  
CLERK

IN THE  
**Supreme Court of the United States**

---

LEE WILSON & COMPANY.....*Appellant,*  
v. No.  110  
UNITED STATES.....*Appellee.*

---

APPEAL FROM THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT.

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BRIEF FOR APPELLANT.

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CHARLES T. COLEMAN,  
*For Appellant.*





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IN THE

# Supreme Court of the United States

---

LEE WILSON & COMPANY.....*Appellant,*

v.

No. 393.

UNITED STATES.....*Appellee.*

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## STATEMENT OF THE CASE.

This is a suit in equity brought by the United States against Lee Wilson & Company to quiet title to a small area that is now land, but which was meandered in the original government survey made in 1841, and described in the field notes and official plats of the survey as a lake. The area contains 853.60 acres, and is situated in sections 22, 26 and 27, in township 12 north, range 9 east, in Mississippi county, Arkansas. The theory of the plaintiff's case is that there was a mistake in the survey, and that the area in suit was land in place and not a lake when the survey was made. The plaintiff therefore contends that the meander



line was a boundary line, and that the title to the area in question did not pass to the state either under the state's selection of the township in which the area is located, as confirmed by the act of Congress of March 3, 1857, or by the patent for the entire township from the United States to the state.

By the act of September 28, 1850, the United States granted to the State of Arkansas all the swamp and overflowed land within her borders. The purpose of the act was to aid the state in the construction of the levees and drains necessary for the reclamation of such lands. The secretary of the interior was required to make out accurate lists and plats of the land contemplated by the grant, and to transmit them to the governor of the state; and he was further required to cause a patent for such lands to issue to the state at the request of the governor.

Under date of November 21, 1850, the secretary of the interior forwarded a circular, with a letter of instruction, to the respective governors of the swamp land states, which circular contained a synopsis of the swamp land grant, and outlined a general administrative plan for carrying it into execution (Rec. 67-69). The circular submitted two methods of selection. The first was to adopt the field notes of the government survey as conclusive evidence of the character of the lands; the second was to disregard the field notes and to make a selection based on an actual inspection of the lands by the state authorities, with proof of their swamp and overflow character. The State of Arkansas

adopted the second method, and passed an act which provided for the appointment of commissioners whose duty it was to ascertain the swamp and overflowed lands and make a report of them to the governor under oath; and the governor was directed to file lists of the lands with the surveyor general. (Act of January 6, 1851).

Presumably the commissioners inspected the lands as they were required by law to do, and duly reported them to the governor. At any rate, the governor filed lists of the swamp lands selected by the state with the surveyor general, and these lists were forwarded through the proper channels to the secretary of the interior. The list including the township in question was filed prior to September 22, 1852, and was approved by the secretary of the interior on May 11, 1853. (Rec. 86, 87.)

The circular sent by the secretary to the governor contained the following provision: "Where satisfactory evidence is produced that the whole of a township or of any particular and specified part of a township, or the whole of a tract of country bounded by specific surveys or natural boundaries, is of the character embraced by the grant, you will so report it." Pursuant to this authority, the governor selected the whole of township 12 north, range 9 east, except section sixteen. The selection did not contain the qualifying clause which usually appears in government patents, that it was "according to the official plats of survey

of said lands returned to the General Land Office by the Surveyor General."

Upon the approval of the selection by the secretary of the interior, proper entries were made in the records of the various land offices of the government to show the selection and approval. The entry in the tract book in the office of the register and receiver at Little Rock was as follows:

"Whole of section 22, township 12 north, range 9 east. Selected as swamp under act of Sept. 28, 1850. Approved May 11, 1853."

"Whole of section 26, township 12 north, range 9 east. Selected as swamp under act of Sept. 28, 1850. Approved May 11, 1853."

"Whole of section 27, township 12 north, range 9 east. Selected as swamp under act of Sept. 28, 1850. Approved May 11, 1853." (Rec. 65.)

This was the status of the land in controversy at the date of the passage of the act of March 3, 1857. That act provided as follows:

"All lands selected and reported to the general land office as swamp and overflowed lands by the several states entitled to the provisions of said act of September 28, 1850, prior to March 4, A. D. 1857, are confirmed to said states, respectively, so far as the same remain vacant and unappropriated, and not interfered with by any actual settlement under any law of the United States."

6 *Fed. Stat. Ann.*, 409.

On September 27, 1858, the United States issued a patent to the state. The description in the patent was as follows:

"Township 12 north, range 9 east. The whole of the township, except section sixteen, containing fourteen thousand five hundred and sixty-five acres and three hundredths acres, according to the official plats of survey of said lands returned to the general land office by the Surveyor General." (Rec. 87.)

The field notes of the survey of 1841 recite that a lake existed in sections 22, 26 and 27, township 12 north, range 9 east, and gave the meander of the lake. (Rec. 40-49.) The official plat of the survey of 1841 shows a meandered area in the sections referred to, and designates this area "lake." (See plat opposite page 112 of Record.)

On September 12, 1859, the state patented fractional sections 22, 26 and 27 to W. B. Waldron (Rec. 89). Waldron conveyed fractional sections 22 and 27 to the Memphis & St. Louis Railroad Company by warranty deed, executed June 11, 1873. All the sections were afterwards forfeited to the state for the non-payment of taxes, and were sold to the state under an overdue tax decree on February 23, 1883. The description in the overdue tax decree is as follows "All of section 22; NE $\frac{1}{4}$  of section 27; NW $\frac{1}{4}$  of 27; SW $\frac{1}{4}$  of section 27, and SE $\frac{1}{4}$  of 27, T. 12 N., R. 9 E." (Rec. 7).

By an act of March 29, 1893, the state granted to the St. Francis Levee District all the right, title and interest of the state in any lands in the district. Shortly afterwards the levee district filed a suit in the chancery court of Mississippi county to confirm its title to the lands in controversy, and obtained a confirmation

decree on December 12, 1894. The description of the lands in the decree is as follows: "All of section 22; all of section 27; N $\frac{1}{2}$  of S $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E." (Rec. 7). This was the status of the title at the date of the passage by Congress of what is known as the Arkansas Compromise Act of April 29, 1898. According to the tract book in the government land office at Little Rock the title to the whole of each of sections 22, 26 and 27 had passed to the state; the state had patented the lands to Waldron; the lands had been forfeited for the non-payment of taxes and sold to the state under an overdue tax decree; the state had granted the lands to the levee board; and the levee board had confirmed its title. The title which the levee board confirmed was that which the state acquired through the sale under the overdue tax decree against Waldron.

At some time prior to 1885, a controversy arose between the United States and the State of Arkansas over the swamp land grant. The differences between them grew out of the fact that the state by legislative enactment had refused to accept the field notes of the government survey as conclusive evidence of the character of the lands, and had appointed commissioners to inspect the lands and make proof of their swamp and overflowed character. When an effort was made to adjust the controversy, the government refused to negotiate with the state unless the latter would recede from that position, and would solemnly agree to accept the field notes as conclusive. (See letter of L. Q.

C. Lamar, Secretary of the Interior, Rec. 70.) By the acts of March 17, 1885, March 17, 1887, and April 8, 1891, the state finally yielded to the demands of the United States, and agreed that in the adjustment of the controversy the field notes would be taken as conclusive. The negotiations continued until 1898, when a compromise was consummated. By the terms of the compromise the state released and quit-claimed to the United States all lands confirmed, certified or patented to the state which had been entered under the public land laws; and it relinquished and quit-claimed to the United States all its right, title and interest under the acts of September 28, 1850, March 2, 1855, and March 3, 1857, in and to all lands in the state which had been granted, confirmed, certified, or patented by the United States under any other acts; and the title to such lands was confirmed in the grantees and in their heirs, successors and assigns (30 Statutes at Large, 367). The state also released and quit-claimed to the United States all claims adjusted and unadjusted growing out of the swamp land grant. (Acts of Arkansas, 1897, p. 89.) On the part of the United States it was provided that "the title of all persons who have purchased from the State of Arkansas any unconfirmed swamp land and hold deeds for the same be and the same is hereby confirmed and made valid as against any claim or right of the United States, and without the payment by said persons, their heirs or assigns, of any sum whatever to the United States or to the State of Arkansas." (30 Statutes at Large, 367.)

At various times during the pendency of the compromise negotiations, representations were made to the land commissioner and to the secretary of the interior that mistakes existed in the survey of 1841, and that areas meandered and designated as lakes in that survey were in fact land in place at the date of the survey. Efforts were made to have these areas resurveyed, and a strenuous effort to this effect was made by the St. Francis Levee District, as it wished to ask a donation of the lands from the government, if the title turned out to be in the government, or to tax the lands for levee purposes, if the title turned out to be in the riparian claimants. The land officers of the government turned a deaf ear to all such entreaties, and declared that there were no unsurveyed lands in Mississippi county, and that the title to the areas referred to had passed out of the government by the selections and patents under the swamp land grant. In 1894 the land department made an investigation by a special agent, who reported that the areas returned as lakes in the field notes and on the official plats of the survey of 1841 were high dry lands covered with forests of fine timber, and that in his opinion no lakes existed at the date of the survey. This report was submitted to the secretary of the interior, but he held that it was not sufficient to impeach the integrity of the government survey, and that on the records of the land office the title had passed out of the government to the state, and the United States had lost jurisdiction (Rec. 74). The opinions of the secretaries of the interior

and the letters of the land commissioners will be set out *in extenso* in the brief.

On December 10, 1892, Mr. Wilson, who afterwards became the president of the defendant company when it was organized, wrote to the commissioner of the general land office and asked him how he could obtain title from the government to land in lakes and bayous which had never been surveyed (Rec. 86). The commissioner replied that the title to the beds of meandered lakes or lands uncovered by the recession of the waters since the survey was in the adjacent land owners, where the government had disposed of the lands bordering on such lakes (Rec. 10). Mr. Wilson purchased the lands in controversy on November 24, 1900 (Rec. 3). He bought sections 22, 26 and 27 as full sections, containing 640 acres each, and paid \$5.50 per acre, which was the full market value of the lands at that date. Before buying, he had the title examined by an attorney at law, and was advised that the title was in the riparian claimants, the parties from whom he afterwards purchased (Rec. 5). The claim of title from the state to the defendant is as follows:

1. Patent from the State of Arkansas to William B. Waldron, executed September 12, 1859, conveying fractional section 22 (Rec. 89).

2. Warranty deed from William B. Waldron and wife to Memphis & St. Louis Railroad Company, executed June 11, 1873, and recorded July 11, 1873, conveying all of fractional section 22, 416 acres.

3. Sale to the State of Arkansas on February 23, 1883, under an overdue tax decree rendered by the



circuit court of Mississippi county, the description being "all of section 22."

4. Decree of the chancery court of Mississippi county, rendered December 12, 1894, confirming in the Board of Directors of the St. Francis Levee District the title to "all of section 22."

5. Deed from the St. Francis Levee District, executed June 6, 1898, recorded June 28, 1898, conveying to William Hunter all of section 22.

6. Warranty deed from William Hunter and wife to James L. Hale, executed October 20, 1899, and recorded October 24, 1899, conveying "all of section 22, T. 12 N., R. 9 E., 640 acres."

7. Deed from James L. Hale and wife to J. W. Quinn, executed October 21, 1899, and recorded October 24, 1899, conveying an undivided one-half interest in all of section 22.

8. Deed from James L. Hale and wife to W. L. Crenshaw and T. M. Cathey, executed August 28, 1900, and recorded September 12, 1900, conveying all of section 22.

9. Deed from J. W. Quinn, James L. Hale, W. L. Crenshaw and T. M. Cathey to R. E. Lee Wilson and S. A. Beall, executed November 24, 1900, and recorded November 26, 1900, conveying all of section 22.

10. Deed from S. A. Beall to R. E. Lee Wilson, executed September 23, 1902, and recorded September 24, 1902, conveying all of section 22.

11. Deed from R. E. Lee Wilson to John Mulroy, executed July 25, 1903, and recorded September 30, 1903, conveying all of section 22.

12. Deed from John Mulroy to Lee Wilson & Company, executed February 2, 1910, recorded February 4, 1910, conveying all of section 22.

13. Deed from R. E. Lee Wilson and wife to Lee Wilson & Company, executed April 10, 1905, and recorded April 14, 1905, conveying all of section 22.

14. Deed from James L. Hale and wife, W. L. Crenshaw and wife, J. W. Quinn and wife and T. M. Cathey and wife to Lee Wilson & Company, executed January 7, 1910, and recorded January 31, 1910, conveying all of section 22 (Rec. 3, 4).

The chain of title to each of the other two sections is similar, with slight variations, and need not be set out.

After purchasing the lands in controversy, Mr. Wilson organized the drainage district which constructed the Tyronzo Canal. The work was commenced in 1900, but was not completed until 1905. The canal begins at a point about a mile and a half west of Osceola, passes through the lands in controversy, and has its outlet in Tyronza Bayou. To obtain better drainage for these particular lands, Mr. Wilson had the canal cut four feet deeper through them, and from them to the outlet, than it was constructed above these lands. He did this at his own expense, the extra cost being about \$2,000.00. All the land in controversy was included in the drainage district, and was assessed for the canal. The assessment on section 22, 640 acres, was \$898.56; the assessment on section 27, 640 acres, was \$768.00; the assessment on the N $\frac{1}{2}$  of the N $\frac{1}{2}$  of section 26, 160 acres, was \$192.00; and the assessment on the N $\frac{1}{2}$  of the S $\frac{1}{2}$  of section 26, 160 acres, was \$144.00. These assessments were paid by the defendant on August 21, 1905. Sections 22 and 27 are

also included in drainage district No. 8, and have been assessed at the rate of \$8.00 an acre on the basis of 640 acres to the section. The defendant has also paid state, county and levee taxes on the lands since it purchased them (Rec. 6). Sections 22 and 26 were assessed by the state as full sections of 640 acres each, and the defendant paid taxes on that basis (Rec. 82). Section 27 was assessed as fractional (Rec. 83). The acreage of the respective sections for levee taxes was the same (Rec. 83-85).

On November 25, 1898, about seven months after the passage of the Arkansas Compromise Act, the commissioner of the general land office made a list of the lands with reference to which the state relinquished its claim by the terms of the compromise, and sent this list to the register and receiver at Little Rock with instructions to correct the tract book in conformity with the list. The letter accompanying the list states among other things as follows:

"In view of the provisions of the act of Congress above referred to, and in order to clear the records of this office and of your office of such selections, it is decided that the claim of the State, under the swamp-land laws, of record, to the tracts of land herein described, is relinquished and settled by said act and you will so note on the records of your office and advise the state authorities accordingly" (Rec. 66).

This list did not contain sections 22, 26 or 27, or any part of any of these sections. So that the government tract book, after it had been corrected to conform to the terms of the compromise act, continued to show,

as it had shown since 1853, that the whole of section 22, the whole of section 26, and the whole of section 27, had been selected by the state under the swamp land act, and the selection approved on May 11, 1853.

In 1910, the government reversed the position which it had maintained for more than half a century, and ordered a resurvey of these lands, which was begun March 1, 1910, and completed April 9, 1910. On August 4, 1911, nearly one year and four months after the resurvey, the government filed its bill in the present case.

The bill alleges that the United States acquired title to the lands in controversy from the Republic of France, by the terms of a treaty between the two sovereignties made in 1803; that the land is a part of the public domain, and had never been surveyed prior to 1910; and that the defendant claimed to be the owner of the land under various patents from the State of Arkansas, tax deeds, chancery decrees and private conveyances, which are specifically set forth in the bill, but all of which are null and void, and cast a cloud on the plaintiff's title. The prayer of the bill is that the said patents, decrees, deeds and conveyances be cancelled as clouds, and that the plaintiff's title be established and confirmed (Rec. 15-23).

The answer admitted that the plaintiff acquired title from the Republic of France, but denied that it is now the owner of the lands. It alleged that the township had been surveyed by the government in 1841;

that at the date of the survey a small lake existed in sections 22, 26 and 27; that the lake was meandered in making the survey, and described as a lake in the field notes and official plats of the survey; that by the act of September 28, 1850, the United States granted to the State all the swamp and overflowed lands within her borders; that the state selected township 12 north, range 9 east, intending thereby to select all the land in the township, as all the land was swamp and overflowed; that the selection was approved by the secretary of the interior on May 11, 1853; that the United States issued a patent to the state for the township on September 27, 1858; that by virtue of the common law in force in the State of Arkansas, a conveyance of a fractional section bordering on an inland lake would operate to convey title to the grantee to the center of the lake; that the State of Arkansas conveyed fractional sections 22, 26 and 27 to the defendant's predecessor in title, the said sections appearing as fractional on the official plats of the government survey by reason of the existence of a lake within them; that by the conveyance of said fractional sections, the state intended to convey and did convey the title to the area which appeared on the plat to be a lake; that the title passed by mesne conveyances from the state's grantee to this defendant; that the state treated the title to the land in controversy as being in the defendant and its grantors, and assessed it for state and county taxes, which the defendant and its grantors paid; that the said lands were also assessed for levee and drain-

age taxes, and the defendant was required to pay and did pay such assessments; and that the defendant is now the owner of said lands. The answer set out the chain of title from the state to the defendant, and exhibited certified copies of the patents, decrees, deeds, and conveyances constituting the chain. The answer specially pleaded the five-years' statute of limitations, under the act of March 3, 1891, c. 561, section 8, 26 Stat. 1099 (Rec. 23-34).

The answer also pleaded the facts set out in this statement of the case as an estoppel against the United States to maintain this suit. The facts relied on to constitute the estoppel were set forth with greater particularity in an amendment to the answer (Rec. 35-39).

No issue as to whether or not there was a mistake in the survey of 1841, or as to whether or not a lake co-extensive with the meander line existed at that time, was made by the pleadings. There is not a single allegation by the government in the pleadings that a lake did not exist at the date of the survey, or that there was a mistake in that survey. But the government introduced evidence tending to show that there was a mistake, and the defendant introduced evidence to the contrary. The evidence on this point is not brought to this court, but it is covered by the following stipulation:

"The evidence introduced by the plaintiff tended to show that no lake existed within the meander line in sections 22, 26 and 27, T. 12 N., R. 9 E., Mississippi

county, Arkansas (except a small shallow pond, not exceeding an acre in extent, in the southwest corner of section 22) at the date of the government survey made in 1841, and approved Oct. 27, 1845, or on Sept. 28, 1850, the date of the swamp land grant, or at the date of the patent of the said township from the United States to the State of Arkansas. The evidence introduced by the defendant tended to show that the area within the said meander line was a non-navigable shallow lake at the dates referred to.

"The evidence showed that if the area in controversy was not a lake, it was swamp and overflowed land at the respective dates referred to herein. The defendant will not assail the finding of the court as to the non-existence of a lake at the respective dates mentioned" (Rec. 9).

The court found in favor of the plaintiff, and rendered a decree quieting and confirming the title in the United States (Rec. 113). This decree was affirmed by the circuit court of appeals (Rec. 127). Within the time allowed by law, the defendant filed a petition for allowance of appeal to this court, and filed its assignment of errors (Rec. 127-128). It also filed a bond conditioned as required by law, which was approved by the court (Rec. 130), and the appeal was allowed as prayed (Rec. 131). Citation issued and service was acknowledged and accepted by the solicitor for the Government (Rec. 131-133). The following stipulation was filed:

"It is hereby stipulated that this cause involves the title to 853.6 acres of land in Mississippi county, Arkansas; that the market value of said land exceeds \$10.00 per acre; and that the amount or value in controversy exceeds the sum of \$5,000.00, exclusive of interest and costs" (Rec. 131).

### Assignment of Errors.

Comes the appellant, Lee Wilson & Company, by Charles T. Coleman, its solicitor, and says that in the record and proceedings herein there is manifest error, and that the United States Circuit Court of Appeals for the Eighth Circuit erred in this, to-wit:

1. In holding that the title to the land in controversy is in the United States.

2. In holding that the United States had never parted with the title to the land in controversy.

3. In not holding that the title to the land in controversy passed from the United States to the State of Arkansas under the swamp land grant of September 28, 1850.

4. In not holding that the land in controversy was selected by the State of Arkansas under the swamp land grant.

5. In not holding that the title to the land in controversy was confirmed in the State of Arkansas by the act of congress, approved March 3, 1857.

6. In holding that the acceptance of the patent which contained a different description from that in the selection, rendered the terms used in describing the land in the selection irrelevant and immaterial.

7. In holding that the state did not stand on the terms of the selection as made by it, and that the acceptance of the patent of September 27, 1858, constituted a modification of the terms of the selection, and an adoption of the description in the patent itself.

8. In holding, in effect, that the title which the state acquired by the selection, as confirmed by the act of congress of March 3, 1857, was surrendered or reconveyed to the United States by the acceptance of the patent which was subsequently issued.



9. In not holding that the title to the land in controversy was conveyed from the United States to the State of Arkansas by the patent issued in 1858.

10. In not holding that the title to land in controversy vested in the State of Arkansas, or in the appellant, by the compromise between the United States and the State of Arkansas, which was made effective by the Act of Congress of April 29, 1898.

11. In not holding that the title to the land in controversy appeared on the records of the United States and of the State of Arkansas to be in the State of Arkansas, or in its grantees, during the period of the negotiation of the compromise between the United States and the State of Arkansas, and at the date of the consummation of such compromise, and that the compromise was entered into and made on the basis of the title being in the state, or in its grantees, so as to estop the United States from afterwards setting up title in itself.

12. In not holding that the officers of the United States charged with the duty of carrying out the compromise between it and the state construed the compromise as confirming the title in the state or in its grantees, and that such practical interpretation is binding on the courts.

13. In not holding that the United States is estopped from prosecuting this action, and from asserting title to the lands in controversy as against the appellant.

14. In not holding that the title to the lands in controversy is in the appellant.

15. In not holding that the state conveyed the lands in controversy to William B. Waldron, and that the title passed by mesne conveyances from William B. Waldron to the appellant.

16. In not holding that the appellant was an innocent purchaser for value without notice of the

claim of the United States, and that as such it is entitled to hold the land.

17. In not holding that the *prima facie* effect of the patent from the United States to the State of Arkansas was to convey the land in controversy to the state.

18. In not holding that the present suit is barred by the five years' statute of limitation pleaded in the answer.

19. In not holding that on the face of the pleading there is no equity in the bill.

20. In not holding that the pleadings raised no issue of a mistake in the original government survey.

21. In not holding that the pleadings raised no issue as to whether or not the area in controversy was a lake at the date of the original government survey, or on September 28, 1850, or on the date when the land was selected by the state, or on the date when it was patented by the United States to the State of Arkansas.

22. In not holding that the selection of the entire township in which the land in controversy is situated included the land in controversy.

23. In not holding that the patent from the United States to the State of Arkansas to the entire township in which the land in controversy is situated included the land in controversy.

24. In holding that the compromise between the United States and the State of Arkansas operated to relinquish the title to the land in controversy from the State of Arkansas or from the St. Francis Levee District to the United States, and in holding that the compromise operated to vest or revest title in the United States.

25. In holding that at the date of the compromise act the St. Francis Levee District only held an inchoate title to the land in controversy.

26. In holding that the St. Francis Levee District was a mere subordinate agency of the State of Arkansas, and that the compromise between the United States and the State of Arkansas had the effect of relinquishing the title held by the St. Francis Levee District to the United States.

27. In not holding that at the date of the compromise act, the title to the land in controversy was in the St. Francis Levee District, and in not holding that this title was confirmed in the levee district by the act of Congress of April 29, 1898.

28. In not requiring the United States to do equity by reimbursing the appellant for the sums paid by him in draining, leveeing and reclaiming the land, and rendering it valuable, as a condition of relief to the United States.

29. In not reversing the decree of the district court, and in not rendering a decree awarding the land in controversy to the appellant.

30. In affirming the decree of the district court in favor of the appellee (Rec. 128-130).

## POINTS AND AUTHORITIES.

### I.

#### The Swamp Land Grant.

- (a) The swamp land grant a grant *in praesenti*.
- (b) Identification, followed by patent or confirmation, vested legal title.

*Hibbon v. Malone*, 85 Ark. 584.

*Kelley v. Cotton Belt Lumber Co.*, 74 Ark. 400.

*Chism v. Price*, 54 Ark. 251.

## II.

### The Title, as Based on the Patent.

- (a) In conveyancing, quantity is a part of the description, but the least determinative part.

*Doe v. Porter*, 3 Ark. 18.

*Towel v. Etter*, 69 Ark. 34.

*Ryan v. Bachelor*, 95 Ark. 375.

*Newsome v. Pryor*, 7 Wheat, 7.

3 Washburn on Real Property, sec. 2322.

2 Devlin on Deeds, sec. 1044.

- (b) This is especially true of patents under the swamp land grant.

*McDade v. Levee Board*, 109 La. 625.

- (c) In every case of a patent for land bordering on a lake, the acreage exceeded that specified in the patent.

*Hardin v. Jordan*, 140 U. S. 371.

*Mitchell v. Smale*, 140 U. S. 406.

*Little v. Williams*, 88 Ark. 37.

*Towel v. Etter*, 69 Ark. 34.

*Crill v. Hudson*, 71 Ark. 390.

(d) The United States, in disposing of its public lands, assumes the position of a private owner,

(e) Its conveyances are construed according to the local laws of the state.

*Hardin v. Shedd*, 190 U. S. 519.

*Hardin v. Jordan*, 140 U. S. 371.

*Shively v. Bowlby*, 152 U. S. 1, 45.

*Railway v. Butler*, 159 U. S. 89, 90, 93.

*Power Co. v. Commissioner*, 168 U. S. 359, 363.

*Day v. St. Louis*, 201 U. S. 332.

*Mitchell v. Smale*, 140 U. S. 406.

(f) By the common law, which obtains in Arkansas, a grant of land abutting on a lake carries title to the center of the lake,

*Hardin v. Jordan*, 140 U. S. 371,

*Mitchell v. Smale*, 140 U. S. 406,

*Rhodes v. Cissell*, 88 Ark. 367,

(g) A patent to land, according to a plat which shows that it borders on a lake, purports to convey the lake-bed itself.

*Little v. Williams*, 88 Ark. 37.

*Kean v. Calumet Canal Co.*, 190 U. S. 459.

- (h) Conversely, a patent to land according to a plat which shows that it borders on an area marked marsh, or sunk-land, or navigable stream, does not purport to convey the marsh, sunk-land or navigable stream.

*Niles v. Cedar Point Club*, 175 U. S. 300.

*Chapman & Dewey Lumber Co. v. St. Francis Levee District*, 232 U. S. 186.

*Hardin v. Shedd*, 190 U. S. 520.

- (i) The purport of the patent, or its *prima facie* effect, is determined by the face of the plat.
- (j) The plat must be taken as true, in determining the effect of a conveyance adopting it.

*Hardin v. Shedd*, 190 U. S. 520.

- (k) The plat is conclusively true, so far as individuals are concerned, for they cannot impeach the government survey.

*Cragin v. Powell*, 128 U. S. 601.

*Russell v. Maxwell Land Grant Co.*, 158 U. S. 256-8.

*McBride v. Whittaker*, 90 N. W. (Neb.) 966, 971-2.

*Little v. Williams*, 88 Ark. 50.

*Whittaker v. McBride*, 197 U. S. 310.

*Masey v. O'Connor*, 23 Tex. 291.

*Jackson v. Hart*, 12 Johnson, 77-82.

*Schlosser v. Cruikshank*, 96 Iowa, 414.

*Minnesota Land & Investment Co. v. Davis*, 40 Minn. 455.

*Lamprey v. Mead*, 54 Minn. 290.

2 Farnham on Water and Water Rights,  
sec. 422.

- (1) The case of *Chapman & Dewey Lumber Company v. St. Francis Levee District*, 232 U. S. 186, distinguished.

### III.

Title, Independent of the Patent, Based on the Selection,  
and Confirmed by the Act of March 3, 1857.

- (a) The Secretary of the Interior was charged with the administration of the swamp land grant.
- (b) He submitted alternative methods of selecting the swamp lands:
  - (1) To accept the field notes of the government survey as conclusive of the character of the lands,
  - (2) To reject the field notes, and select by actual inspection, with proof that the lands were swamp and overflowed lands.

- (c) The State of Arkansas, by legislative act, adopted the second method.
- (d) The state was invited to select a township as a whole, if all the land in the township was swamp and overflowed.
- (e) The state selected the whole of township 12 north, range 9 east.
- (f) The selection, which was approved May 11, 1853, included the lands in controversy.

*Barringer v. Davis*, 120 N. W. (Iowa) 65.

*The Tolleston Club v. State*, 141 Ind. 197.

*Lodge's Lessee v. Lee*, 6 Cranch, 237.

*Kean v. Calumet Canal Co.*, 190 U. S. 460.

- (g) The selection was treated by the government as including these lands.
- (h) The whole of section 22, the whole of section 26, and the whole of section 27, without regard to acreage, was noted on the government tract book as having been selected by and approved to the state.
- (i) The selection was confirmed by the act of Congress of March 3, 1857.

*Martin v. Marks*, 7 Otto (97 U. S.) 347.

*Chism v. Price*, 54 Ark. 255.



*Tolleston Club v. State*, 141 Ind. 206.

*Wright v. Roseberry*, 121 U. S. 488.

*Kean v. Calumet Canal Co.*, 190 U. S. 460.

- (j) As that act confirmed the title in the state,  
a patent was unnecessary.

*Cases supra.*

- (k). If the patent which was subsequently issued  
did not include these lands, the omission  
of them did not divest the title  
already confirmed in the state.

*Martin v. Marks*, 70 Otto, 347.

- (l) If the selection had only been of the surveyed  
area according to the plat, that  
would have identified and therefore  
included the lands in suit.

*Kean v. Calumet Canal Co.*, 190 U. S.  
460.

Cases cited under II, g, *supra*.

- (m) And the act of March 3, 1857, would have  
confirmed the title in the state.

#### IV.

##### Arkansas Compromise.

- (a) The compromise of the swamp land controversy  
between the United States  
and the State of Arkansas concludes  
the government as to the lands in controversy.

- (b) The United States required the state to accept the records as a basis for the compromise.
- (c) The records showed that the title to these lands had passed to the state.
- (d) It was agreed that "the lands now patented, approved or confirmed to the state" should constitute the full measure due the state.
- (e) The act also confirmed the title in the state's grantees.
- (f) The land officers of the government construed the compromise as assuring these lands to the state or its grantees.
- (g) Their construction is persuasive on the courts.

*Heath v. Wallace*, 138 U. S. 573, 582.

*Hastings R. Co. v. Whitney*, 132 U. S. 357, 366.

*Baker v. Sivegart*, 199 Fed. 865.

*Schell's Executors v. Fanche*, 138 U. S. 562, 572.

- (h) As the compromise was consummated on the assumption that these lands belonged to the state, the government is estopped from now claiming them.

- (i) Where two states agree that certain records shall constitute the basis of a compromise of their differences, neither can afterwards impeach the integrity of those records.

*Michigan Land & Lumber Co. v. Rust*,  
168 U. S. 598, 599.

## V.

### Estoppel.

- (a) The facts in this case raise an estoppel against the United States.
- (b) The estoppel grows out of the records, acts and declarations of the government with respect to the defendant, and also out of the Arkansas Compromise.
- (c) When sovereign states accept a status as the basis for a treaty between them, no party to the treaty can afterwards impeach that status.

*Michigan Land & Lumber Co. v. Rust*,  
168 U. S. 598.

- (d) When the United States comes into court to enforce its proprietary rights, it comes as any other suitor.

*State of Iowa v. Carr*, 191 Fed. 257.

*Hemmer v. United States*, 204 Fed. 898.

*Rhode Island v. Massachusetts*, 12 Peters  
657, 737.

*Brent v. Bank*, 10 Peters, 569, 614.

*Mitchell v. United States*, 9 Peters 711.

*United States v. Castillero*, 2 Black 17,  
320.

- (e) And it is subject to those equities which  
are recognized as fundamental in con-  
troversies between private parties.

*United States v. Chandler-Dunbar Water  
Power Co.*, 152 Fed. 25.

*United States v. Detroit Lumber Co.*, 200  
U. S. 321.

- (f) Resolute good faith should characterize  
the conduct of states in their dealings  
with individuals.

*State of Indiana v. Milk*, 11 Fed. 389.

*United States v. Dawles Co.*, 41 Fed. 493.

- (g) The United States may be estopped like an  
individual.

*Lindsey v. Hawes*, 2 Black, 554.

*Brannon v. Wirth*, 17 Wallace 32.

*Clark v. United States*, 95 U. S. 539-544.

*State of Michigan v. Railroad Company*,  
69 Fed. 117-121.

## VI.

### Innocent Purchaser.

- (a) The defendant is a *bona fide* purchaser for value without notice of the government's claims.
- (b) One may be an innocent purchaser as against the United States.

*United States v. Stinson*, 197 U. S. 200.

- (c) To a bill in equity by the United States to cancel a patent, the defense of a *bona fide* purchaser for value without notice is perfect.

*Colorado Coal Co. v. United States*, 123 U. S. 313.

*United States v. Detroit Lumber Co.*, 200 U. S. 321-339.

## VII.

### Limitations.

- (a) The suit is barred by the five years' statute of limitations of March 31, 1891, applicable to suits by the United States to vacate or annul patents.

*United States v. Chandler-Dunbar Company*, 209 U. S. 447.

- (b) The patent purported to include the land, and constituted an identification of it by the Secretary of the Interior.

*Wright v. Roseberry*, 121 U. S. 488.

*French v. Ryan*, 93 U. S. 169.

*Hendry v. Willis*, 33 Ark. 833.

*Ray v. Railroad*, 69 Minn. 547.

*S. C.* 173 U. S. 578.

*Heath v. Wallace*, 138 U. S. 537.

*Michigan Land Co. v. Rust*, 168 U. S. 589.

*Securities Land Co. v. Burns*, 138 U. S. 167.

*Kean v. Calumet Co.*, 190 U. S. 452.

*Hardin v. Shedd*, 190 U. S. 520.

*United States v. Winona Railroad*, 165 U. S. 474.

- (c) A suit to annul a plat which by reference is a part of a patent, is a suit to annul the patent.
- (d) As the lands were *prima facie* included in the patent, this suit is one to vacate the patent *pro tanto*.
- (e) The plea of the statute in this case is meritorious, and ought to appeal to a court of equity.

*Dewesse v. Reinhard*, 165 U. S. 390.

- (f) The rule of concealed fraud does not apply.  
*Bailey v. Glover*, 21 Wallace, 342.
- (g) If there was any fraud, it was by the government's own agents and employees.
- (h) And it was unknown to the defendant, but could have been discovered by the government.

*Wood v. Carpenter*, 101 U. S. 135, 141.

*Amy v. Watertown*, 130 U. S. 320, 324.

*Bailey v. Glover*, 88 U. S. 342.

*United States v. Puget Sound Traction Co.*  
215 Fed. 436.

## BRIEF.

### I.

#### Swamp Land Grant.

By the swamp land grant of September 28, 1850, the United States granted to the State of Arkansas all the swamp and overflowed lands within her borders. The act is as follows:

*"An Act to enable the State of Arkansas and other states to reclaim the 'swamp lands' within their limits.*

*"Be it enacted by the senate and house of representatives of the United States of America, in Congress assembled, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act shall be and the same are hereby granted to said state.*

*"SEC. 2. And be it further enacted, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas; and at the request of said governor cause a patent to be issued to the state therefor, and on that patent the fee simple to said lands shall vest in said State of Arkansas, subject to the disposal of the legislature thereof. Provided, however, that the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.*

*"SEC. 3. And be it further enacted, That, in making out a list and plats of the land aforesaid, all legal*



subdivisions, the greater part of which is 'wet and unfit for cultivation,' shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

"SEC. 4. *And be it further enacted*, That the provisions of this act be extended to and their benefits be conferred upon each of the other states of the Union in which such swamp and overflowed land, known and designated as aforesaid, may be situated."

9 Statutes at Large, 520.

The act operated as a grant *in praesenti*, and passed an inchoate title to the state; but a patent to the state, or a selection and confirmation under the act of Congress of March 3, 1857, was necessary in order to clothe the state with the legal title.

*Hibbon v. Malone*, 85 Ark. 584.

*Kelley v. Cotton Belt Lbr. Co.*, 74 Ark. 400.

*Chism v. Price*, 54 Ark. 251.

*United States v. Montana Mnfg. Co.*, 196 U. S. 573.

*Rogers Locomotive Works v. Emigrant Company*, 164 U. S. 559.

## II.

### The Title as Based on the Patent.

It is customary to say that a selection and patent were required, as an identification and segregation of the swamp and overflowed lands, to vest the legal title in the state. But the statement must be modified with

reference to selections made prior to the passage of the act of Congress, approved March 3, 1857. The effect of this act will be discussed under another topic, and for the present we shall deal with the patent itself.

The purpose of the government was to grant all the swamp and overflowed lands to the state. As this was for the benefit of the state, it may be assumed that the latter intended to accept and to receive the full measure of the government's bounty. It is important to bear this fact in mind, for intention is the very loadstar of construction and interpretation.

The government survey of Mississippi county was commenced in 1837, and completed in 1841. The exterior boundary lines of township 12 north, range 9 east, were run at a different time from the survey of the interior sub-divisional lines of that township. The survey of the sub-divisional lines was completed in 1841. By the plat of this survey, the *locus in quo* appears as a meandered area in sections 22, 26 and 27, which is designated on the plat as "lake." This area embraced 853.60 acres, and was known locally as Moon Lake.

On September 27, 1858, the whole of the township was patented to the State. The description in the patent is as follows:

"Township 12 north, range 9 east. The whole of the township, except section 16, containing fourteen thousand five hundred and sixty-five acres and three hundredths acres, according to the official plats of

survey of the said lands returned to the general land office by the surveyor general" (Rec. 106).

We wish to refer to a few general principles, and then take up the patent, treating it not as a patent for the whole township, but only as a patent for the *fractional sections shown by the plat to abut on the area marked "lake."*

In conveyancing, quantity is considered a part of the description, but the least determinative part. Therefore, quantity yields to course and distance, and course and distance in turn yield to artificial and natural objects.

"Quantity, in cases of this kind, is regarded merely as a part of the description, and is rejected if it be inconsistent with the actual area when the same is indicated and ascertained by known monuments and boundaries."

*Doe v. Porter*, 3 Ark. 18.

*Towel v. Etter*, 69 Ark. 34.

*Ryan v. Bachelor*, 95 Ark. 375.

*Newsome v. Pryor*, 7 Wheat 7.

3 Washburn on Real Property, Sec. 2322.

2 Devlin on Deeds, Sec. 1044.

The rule that quantity yields to the other terms of description is especially applicable to descriptions under the swamp land grant, because it tends to give effect to the purpose of the government, as expressly declared in the act itself. Congress granted to the

state "the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act."

*McDade v. Levee Board*, 109 La. 625.

The very position assumed by the government in the present case conclusively demonstrates the immateriality of the acreage recited in the description. We will show that the patent, in connection with the field notes and plat, *prima facie* conveyed title to the bed of the lake as it appeared on the plat, as well as title to the surrounding land. To limit this *prima facie* effect of the patent, the government undertakes in this case to show that there was a mistake in the survey, and that what is denominated on the plat as "lake," was in fact land in place at the date of the survey, and *for this reason* was not conveyed to the state, notwithstanding the descriptive terms employed in the patent.

This is a practical admission that if a lake had existed at the time of the survey, and its shore line had corresponded to the meander line, the title to the 850 acres within the limits of the meander would have passed to the state in fact, as it did pass *prima facie* on the face of the record, even though this area was not included in the acreage specified in the patent. The authorities are to the same effect, for in every case in which it has been held that the bed of the lake passed as a part of the grant of the littoral shore, the acreage was correspondingly increased over the acreage specified in the patent.

*Hardin v. Jordan*, 140 U. S. 371.

*Mitchell v. Smale*, 140 U. S. 406.

*Little v. Williams*, 88 Ark. 37.

*Towel v. Etter*, 69 Ark. 34.

*Crill v. Hudson*, 71 Ark. 390.

In the disposition of its public lands within the confines of a state, the United States assumes the position of a private owner, subject to the general laws of the state, and its conveyances are to be construed and interpreted according to those laws.

*Hardin v. Shedd*, 190 U. S. 519.

*Hardin v. Jordan*, 140 U. S. 371.

*Shively v. Bowlby*, 152 U. S. 1, 45.

*Railway v. Butler*, 159 U. S. 89, 90, 93.

*Power Co. v. Commissioner*, 168 U. S. 359,  
363.

*Day v. St. Louis*, 201 U. S. 332.

*Mitchell v. Smale*, 140 U. S. 406.

By the common law, which is in force in the State of Arkansas, a grant of land bordering on a non-navigable inland lake carries title to the center of the lake, and vests in the grantee that portion of the bed of the lake which would be included within an extension of the side lines to the center of the lake.

*Hardin v. Jordan*, 140 U. S. 371.

*Mitchell v. Smale*, 140 U. S. 406.

*Rhodes v. Cissell*, 83 Ark. 367.

Treating the patent as a conveyance of the fractional sections bordering on a meandered area which was denominated on the plat as "lake," its *prima facie* effect was to convey the title to the area marked lake, as well as to the fractional sections surrounding it.

"Where a patent conveys swamp land from the United States to the state, describing the land as bordering on the meander line of a non-navigable lake, the effect was to vest *prima facie* title to the bed of the lake, as shown in the plats, from meander shore lines to center; and a conveyance from the state in turn to its grantee had the same effect."

*Little v. Williams*, 88 Ark. 37.

"On general principles of conveyancing, the state would have acquired the land in controversy here by a conveyance from the United States describing the upland according to the survey, because the local law of Indiana and the common law as understood by this court are the same, so far as this case is concerned. *Stoner v. Rice*, 121 Ind. 51; *Hardin v. Jordan*, 140 U. S. 371. The case is stronger if the land passed under the Swamp Land Act, as has been held by the state court with regard to this and similar patents."

*Kean v. Calumet Canal Company*, 190 U. S. 459.

We have already called attention to the fact that the patent in the present case must be construed according to the laws of Arkansas.

"In the case of land bounded on a non-navigable lake, the United States assumes the position of a private owner, subject to the general law of the state, so far as its conveyances are concerned."

*Hardin v. Shedd*, 190 U. S. 519.

It will be conceded that riparian titles are governed by the local law.

*Kean v. Calumet Canal Company*, 190 U. S. 452.

*Whittaker v. McBride*, 197 U. S. 512.

*Hardin v. Jordan*, 140 U. S. 371.

It appears, therefore, that if the patent be construed as only a conveyance of fractional sections 22, 26 and 27, the *prima facie* effect of the description, in connection with the official plat, would include the area which appears on the plat as a lake, as well as the uplands surrounding it. In other words, construing the patent for the whole of township 12 north, range 9 east, 14,565.03 acres, "according to the official plat of the survey," as limiting the conveyance to the so-called surveyed lands of the township, as decided in *Chapman & Dewey Lumber Company v. St. Francis Levee District*, 232 U. S. 186, yet the patent as thus construed, taken in connection with the official plat which represents that the surveyed lands border on a meandered inland lake, purports on the face of the record to be a conveyance of the "plat" lake-bed, as well as of the surveyed lands adjoining it.

*Little v. Williams*, 88 Ark. 50.

On the other hand, where the plat designates an unsurveyed area as marsh, sunk land, or navigable stream, a patent for the surrounding surveyed area, "according to the official plat," does not purport to

convey the "plat" marsh, or "plat" sunk land or navigable stream, and the fact that such area was really a lake or pond would not avail the patentee.

*Niles v. Cedar Point Club*, 175 U. S. 300.

*Chapman & Dewey Lumber Co. v. St. Francis  
Levee District*, 232 U. S. 186.

*Hardin v. Shedd*, 190 U. S. 520.

It would seem that the foregoing proposition is too obvious and too well-settled to be seriously controverted. Assuming it to be sound, it is more peculiarly applicable to a patent for swamp lands under the swamp land grant than to a patent for lands of any other character. Congress granted to the state *the whole of the swamp and overflowed lands*. The state, by express legislative enactment, directed its agents to select all the swamp and overflowed lands within its borders. The grant was a bounty, pure and simple, and a bounty which both parties had declared should be full and complete. When it came to identifying the lands thus freely given and fully accepted, all that was necessary was to find descriptive terms that would be as all-inclusive as the manifest and declared intention of the respective parties. The official plat of the government survey naturally suggested and readily furnished the proper descriptive terms. The plat showed that the area in question was a small lake surrounded by parts of three fractional sections. As a lake, it was within the purview of the swamp-land grant. Indeed, it was the special subject of that



reclamation which the state was to undertake, and in aid of which the grant was made. Now, it would have been a singular disregard of the technical phraseology of conveyancing to have described the area in the patent as "lake." Perhaps no such descriptive term was ever used in a government patent. What description, then, would a conveyancer have employed to include the lake and the fractional sections surrounding it? Obviously, he would have described the fractional sections themselves, and then added the words "according to the official plats of the survey of the said lands returned to the general land office by the surveyor general." For, by describing the fractional sections according to the official plat which showed that they were made fractional by the existence of a lake within them, the description would have purported to include the lake as shown by the official plat.

It is preposterous to assume that the secretary of the interior did not intend that the area described as "lake" should pass under the patent to the state. It may be true that the acreage given in the patent was not sufficient to include this particular area. But the acreage was not material, and absolutely no reason existed for excluding the area. The land had no value at the date of the patent, and even if it had, the land was precisely that character of land which congress had undertaken to give to the state. In employing descriptive terms that naturally purported to include this area, the secretary of the interior was merely carrying out the declared intention of con-

gress, and that he understood that the area was included in the patent is shown by the fact, which will be more particularly emphasized hereafter, that from the day of the selection by the state until after the resurvey of 1910, this identical area was noted on the tract books in the government land offices in Washington and in Little Rock as having passed to the state under the swamp-land grant. In other words, the three sections, within which the existence of a small lake was noted on the plat, were entered on the government tract books as lands which had passed to the state, not as fractional sections, or as sections containing less than 640 acres each, but as "the whole of section 22," "the whole of section 26," and "the whole of section 27," and the acreage of the respective sections was neither given nor alluded to.

It must be borne in mind that the alleged mistake in the survey has nothing to do with the interpretation of the descriptive terms employed in the patent. For the present we are merely trying to show that the description *prima facie* includes the "plat" lake-bed itself. On the face of the record alone, the title to the bed of the supposed lake purported to be vested in the state under the patent.

"It was noted that the conveyance was by reference to the official plat. The plat of the Illinois portion, unlike that of the part in Indiana, describes the lake as a 'navigable lake.' It is true that this was a mistake, but it might be urged that the description must be taken to have the same effect as if it were true when we are determining the effect of the conveyance adopt-

ing it. It would seem that if a conveyance of land bounded by navigable water would not pass land below the water line, a conveyance purporting to bound the land by navigable water does not purport to pass land below the water line."

*Hardin v. Shedd*, 190 U. S. 520.

The converse of the proposition announced in that case is also true. Where the common law prevails, and a conveyance is made with reference to an official plat which denominates an unsurveyed area as lake, the conveyance purports to pass the bed of the lake, and though no lake exist in fact, the description "*must be taken to have the same effect as if it were true when we are determining the effect of a conveyance adopting it.*"

It appears from the foregoing decisions that *prima facie* the state acquired title to the bed of Moon Lake. As the state adopted the same descriptive terms in conveying to its grantees, it follows that *prima facie* the state's grantees acquired title to the bed of Moon Lake.

It is so essentially true that *prima facie* the state acquired and also conveyed the title to the bed of the lake, that no individual would be allowed to contest this title by alleging a mistake in the survey. In other words, as between individuals, the title is conclusively in the state's grantee. If the present suit were an action of ejectment brought by the defendant against an individual, the court would be bound to hold on the

record in this case that the title was in the plaintiff in the ejectment suit.

*Cragin v. Powell*, 128 U. S. 691.

*Russell v. Maxwell Land Grant Co.*, 158 U. S. 256-8.

*McBride v. Whittaker*, 90 N. W. (Neb.) 966, 971-2.

*Whittaker v. McBride*, 197 U. S. 510.

*Maxey v. O'Connor*, 23 Tex. 291.

*Jackson v. Hart*, 12 Johnson, 77-82.

*Schlosser v. Cruikshank*, 96 Iowa, 414.

*Minnesota Land & Investment Co. v. Davis*, 40 Minn. 455.

*Lamprey v. Mead*, 54 Minn. 290.

2 Farnham on Water and Water Rights, Sec. 422.

"The legal effect of the patent to the state of the fractional sections and parts of sections surrounding the meander lines of the lake, according to the official plats of the public survey, was to convey all riparian rights, and by virtue thereof to vest *prima facie* title to the bed of the lake, as shown on the plats, from meander shore lines to center. The conveyance executed by the state in turn to its grantees had the same effect."

*Little v. Willims*, 88 Ark. 50.

"The official surveys made by the government are not open to collateral attack in an action at law between private parties."

*Little v. Williams, supra.*

It will probably be argued that our present contention is opposed to the opinion of this court in *Chapman & Dewey Lumber Company v. St. Francis Levee District*, 232 U. S. 186. But such is not the fact. The gist of the opinion in that case is that the description in the patent did not include the lands involved in that suit. The description was as follows:

"Township 12 north of range 7 east. The whole of the township (except section sixteen) containing thirteen thousand eight hundred and fifteen acres and sixty-seven hundredths of an acre \* \* \* according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General."

In the government survey, a large area in the township had been meandered, and marked on the official plat as "Sunk Lands." This was the area in controversy. The lower court found that it was land in place at the date of the survey.

The Supreme Court held that while the words in the patent, "the whole of the township," were comprehensive, yet, as qualified by the explanatory words "according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General," and as further qualified by a statement of the number of acres, which corresponded to the surveyed area, but was many thousand acres less than the entire area of the township, such words should be interpreted to embrace only the surveyed area of the township.

The court also held that the patent to the surveyed land which was shown by the official plat to bor-

der on a meandered area marked "Sunk Lands," did not convey title to the area so designated.

But the opinion decides another point, which is very important in the present case. Before stating the point, it may be well to refer to one or two prior decisions in which the same question was involved, and which are approved and followed in the case last alluded to.

In *Little v. Williams*, 88 Ark. 37, the Supreme Court of Arkansas held that a patent from the United States which conveys a township "according to the plats of the survey," only conveys the surveyed land in the township. But in that case the court also determined the legal effect of a conveyance of the surveyed land, where such land appeared on the plat to abut on a lake. And the court held that "the legal effect of the patent to the state of the fractional sections and parts of sections surrounding the meandered lines of the lake, according to the official plats of the public survey, was to convey all riparian rights, and by virtue thereof to vest *prima facie* title to the bed of the lake, as shown on the plats, from meandered shore line to center." And it was said that this *prima facie* effect was conclusive against everyone except the United States.

The meaning of the language quoted from the opinion in *Little v. Williams*, is perfectly clear. If a lake is marked on the official plat, a conveyance of the surveyed land surrounding the "*plat lake*," if made

with reference to the plat, *prima facie* conveys the area which the plat designates as "lake," whether a lake exists in fact or not. In other words, it is merely a question of the legal construction of the descriptive clause of the conveyance; and as the terminology is adopted, not with reference to the actual facts which exist on the ground, but with reference to conditions which appear on the plat, the description embraces everything called for by the plat, or the area which would be included within the descriptive terms, if the facts actually existed as the plat represents them to exist.

Let us illustrate. Suppose on the plat of a certain township, section 5 is marked "Smith's farm," and that Smith owns the section, though it in fact is wild and unoccupied, and not a farm at all. A conveyance of Smith's farm, "as the same appears on the plat of said township," would convey section 5, because the description does not refer to the actual fact, but to the *plat fact*, so to speak; and the plat must be taken as true when we are construing the effect of a description which adopts it. And proof that every acre in section 5 was timber land, and that Smith had never used a foot of the land as a farm, would not render the conveyance inoperative, nor detract in any way from the grantee's title to the whole section.

The exact point was decided in *Hardin v. Shedd*, 190 U. S. 520. The plat showed a navigable lake. The lake in fact was not navigable. The character of the lake was material, because the grant would stop at the

shore line in the one case, but would include the bed of the lake in the other. The conveyance was with reference to the official plat, which described the water as a "navigable lake." The court said:

"It is true that this was a mistake, but it might be urged that the description must be taken to have the same effect as if it were true when we are determining the effect of a conveyance adopting it."

And the court held that though the lake was not navigable, and a grant of the surrounding land would ordinarily pass the bed of the lake, yet as the conveyance was made with reference to a plat which marked the lake as navigable, the description, in connection with the plat which constituted a part of it, limited the grant to the shore line.

As a self-evident corollary of the foregoing, it was also held that a conveyance which purports to bound the land by navigable water, does not purport to pass the land below the water line.

The court reaffirmed this proposition in the case of *Chapman & Dewey Lumber Company v. St. Francis Levee District, supra*. The official plat denominated a meandered area as "sunk lands." The United States conveyed the surrounding lands to the state, "according to the official plats of the survey." It was a mistake to meander this area. But in construing the legal effect of the description based on the official plat, the court said:

"That it is now found, as shown by the decisions below, that these areas ought not to have been so



meandered and returned, but should have been surveyed and returned as land, does not detract from the effect which must be given to the plat in determining what was intended to pass under the patent."

And the court cites *Hardin v. Shedd*, 190 U. S. 508, 520, and *Niles v. Cedar Point Club*, 175 U. S. 300, 306, cases strongly relied on by the defendant in the case at bar, as authority for the proposition.

Riparian ownership does not exist in "sunk lands," (*Chapman & Dewey Lumber Company v. St. Francis Levee District, supra*), any more than it exists in "marshes," (*Niles v. Cedar Point Club, supra*) or in the beds of navigable lakes (*Hardin v. Shedd, supra*). Therefore, a conveyance made with reference to a plat which bounds the land by "sunk lands," does not purport to pass the sunk land, any more than do conveyances which bound the land by a marsh or by navigable water purport to pass the marsh or the land below the water line. And the description could not be enlarged by showing that what the plat called sunk land, or marsh, or navigable water, was in fact a non-navigable lake. In other words, the *fact* is not material, for the plat must be taken as true in determining the effect of a description which adopts it. And so, as riparian ownership does exist in small inland lakes, when a conveyance is made with reference to an official plat which bounds the land by an area which is designated as such a lake, the *prima facie* effect of it is to convey the area called lake, for the conveyance, in connection with the plat, specifically purports to convey such area.

As germane to the discussion of the legal import of descriptive words when used in connection with maps and plats, the court will pardon the suggestion that perhaps confusion has at times arisen out of a rather loose use of the phrase "riparian rights." Strictly speaking, that phrase, and such cognate terms as accretion, reliction and revulsion, are inappropriate to small non-navigable lakes and streams. The expression "riparian title" is much nearer to the point. The common law doctrine is that a patent or deed to a tract of land bordering on a non-navigable lake or pond conveys the title to the center of the lake or pond, *by virtue of the original grant*. On the delivery of the deed, the grantee is immediately invested with the title to the bed of the lake, and to the water itself, and that title is not dependent upon, or affected by, the subsequent action of the water either in gradually building up land against the shore by accretion, or in uncovering submerged land by reliction. So, a grant of blackacre, without any other descriptive term, and without reference to any map or plat, would convey the title not only to blackacre, but to the bed of a lake on which blackacre bordered, and of which it constituted the littoral shore. In such a case, however, the grantee's title to the bed of the lake would depend on the actual existence of the lake, and on the coincidence of its shore line with the border of blackacre, and extrinsic evidence of such fact would be admissible for the purpose of showing the grantee's ownership of the land constituting such bed. Indeed, the grantee's

title to the bed of the lake would not appear on the face of the deed, or on the face of the record title at all, and evidence *aliunde* would be necessary in order to show title in him. But, on the other hand, if blackacre appeared on a plat as bounded by a lake, a conveyance of blackacre according to the plat would, *on the face of the record*, pass the title to the area marked lake, and extrinsic evidence of the existence of a lake in fact, and of its contiguity with blackacre, would not be required in order to show the grantee's title to such area. It appears from the foregoing, therefore, that if the owner of blackacre were also the owner of a tract of *land* adjoining it, and he should publicly dedicate a plat on which such adjoining land was delineated and described as a lake, a conveyance by him of blackacre "according to the publicly dedicated plat," would pass the title to such land, because the descriptive terms, as furnished by the reference to the plat, would purport to include what the plat denominated as lake, though in fact it was land. In short, it is a mere matter of description, and in the case just put, the grantor could describe the subject of the conveyance as blackacre and the tract of land adjoining it, giving the metes and bounds of the latter; or as blackacre, and the adjoining tract of land which has been platted as a lake (referring to the plat); or as blackacre, and the lake as shown on the plat; or merely as blackacre, "according to the plat," and the descriptions would be identical in legal effect, and each would embrace blackacre and the adjoining

tract referred to, without the slightest regard to the question whether a lake in fact existed on the adjoining tract or not.

In the case at bar, the plat showed a meandered lake. As the patent conveyed the surrounding land (that is, the surveyed land) "according to the official plats of survey," it bounded the land conveyed on a lake, and it therefore purported to pass the bed of the lake itself, or the area which was marked on the plat as "lake."

Under the authorities heretofore cited, the court must approach a consideration of this cause from the viewpoint of the title having passed, *prima facie*, from the United States to the state. The government says that there was a mistake in the survey, and it seeks to have this alleged mistake corrected for the purpose of divesting out of the defendant, as the state's remote grantee, the title which *prima facie* it now holds. Without going into the question of the right of the government in ordinary cases to correct its survey for the purpose of converting meander lines into boundary lines, we contend that the government has either parted with that right in the present case, or that it would be inequitable on the facts in this record to permit the right to be now asserted. These questions will be discussed under Chapter IV of the brief, entitled "The Arkansas Compromise," and Chapter V, entitled "Estoppel."

### III.

#### Title, Independent of the Patent, Based on the Selection, and Confirmed by the Act of March 3, 1857.

Heretofore, we have been discussing the title which the state acquired under the *patent* from the United States, which was issued on September 7, 1858. The patent conveyed "Township Twelve (12) North, Range Nine (9) East. The whole of the township, except section sixteen (16), containing fourteen thousand five hundred and sixty-five and three-hundredths acres, according to the official plats of the survey of the said lands returned to the General Land Office by the Surveyor General." We have shown that the area in controversy was conveyed by the patent, whether the patent be construed as a grant of all the land in the township, under the description "the whole township," or whether it be construed as a grant only of the specific lands surrounding the area in controversy, which area was represented on the official plat to be a lake. In the latter case, if a lake in fact existed, the state acquired title to the bed of the lake as a part of the grant of the fractional sections surrounding the lake. If a lake did not in fact exist, the state nevertheless acquired title to the area which was designated on the official plat as "lake," because *prima facie* the title passed to the state on the face of the record, and the compromise of April 29, 1898, known as the Arkansas Compromise, which was based on the record, had the legal effect of fixing the status as disclosed by the

record, and of thereby relinquishing, as against the state, all claims on the part of the government which were in contravention of the record. Furthermore, it will hereafter be shown that as the title had passed to the state's grantee at the date of the compromise, it was expressly confirmed in such grantee by the third section of the compromise act.

We come now to another phase of the title which is not based on the patent at all, and, if our contentions with reference to the patent are erroneous, we propose to demonstrate that the state had acquired a perfect and indefeasible title to the lands in controversy before the patent was issued, and that this title was not and could not have been affected by the patent itself. In other words, we shall show that the issuance of the patent was a mere ministerial act, as the title to the specific lands in controversy was already in the state; and that if the descriptive terms of the patent were not broad enough to include these lands, or if the patent contained a reservation or restriction, express or implied, which either limited or purported to limit the grant to the so-called surveyed area, the ministerial act of issuing the patent did not derogate from the title which the state had already acquired, and which was perfect and indefeasible at the date of the patent. The title referred to is that which the state acquired by its selection of all the lands in township 12 north, range 9 east, and the confirmation of this selection by the acts of Congress of March 2, 1855, and March 3, 1857.

While the act of September 28, 1850, was a present grant to the state of all the swamp and overflowed lands within her borders, the act was not self-executing, for an identification of the lands falling within the descriptive terms of the grant was necessary. By the second section of the act, the secretary of the interior was clothed with the power and charged with the duty of identifying the specific lands which passed under the grant. He was required to make out an accurate list and plats of the lands which were swamp and overflowed, and, when such lands were selected by the state, to cause a patent to issue, conveying the legal title to the state. The act made the secretary of the interior a special tribunal for the purpose of identification, and his action in the premises was to be conclusive.

Immediately after the passage of the act, the secretary of the interior formulated an administrative plan for carrying it into execution, and he forwarded it in the form of a circular, with a letter of instructions, to the respective governors of the swamp land states. The circular and letter bear the date of November 21, 1850. These documents are extremely important.

The circular contains a synopsis of the act of September 28, 1850, and, in describing the character of the lands embraced in the grant, says:

"This act clearly and unequivocally grants to the several states those lands which, from being swamp or subject to overflow, are unfit for cultivation; in this class is included also all lands which, though dry part

of the year, are subject to inundation at the planting, growing and harvesting season, so as to destroy the crop, and therefore are unfit for cultivation, taking the average of the seasons for a reasonable number of years as the rule of determination."

The circular then calls on the governors to make selections of the lands embraced within the provisions of the act:

"You will please make out a list of all the lands thus granted to the state, designating those which have been sold or otherwise disposed of since the passage of the law, and the price paid for them when purchased."

The circular submitted alternative methods of selection, and the distinction between these methods is important. The first method was to adopt the field notes of the government survey as conclusive of the character of the lands; and the second was to disregard the field notes entirely, and make a selection based on an actual inspection of the lands by the state authorities, with proof by affidavit or otherwise of the swamp and overflowed character of the lands. The circular states:

"The only reliable data in your possession from which these lists can be made out are the field notes of the survey on file in your office; and if the authorities of the state are willing to adopt these as the basis of those lists you will so regard them. If not, and those authorities furnish you satisfactory evidence that any lands are of the character embraced by the grant, you will so report them" (Rec. 82).

In respect to this subject, the letter from the secretary of the interior to the governor of the State of Arkansas, says:



"I have the honor to enclose you a copy of the instructions this day sent to the land officers of your state, for the selection of the swamp and overflowed lands to which the state will be entitled by the act of 28th September, 1850.

"You will perceive that by those instructions the land officers are authorized to receive such reliable evidence of the character of any of those lands as may be presented by the authorities of the state; and as many of the lands were probably surveyed at dry seasons, and hence are not represented by the descriptive notes or plats as being of that character, I have supposed that it may be a matter of sufficient importance to induce you to call upon the county surveyors or other respectable persons of your state for a statement, under oath, of the swamp or overflowed lands in their respective counties.

"Such testimony, you perceive, will be regarded as establishing the facts in the case, and on receipt of the report of the land officers, lists of the lands will be prepared as required by the act, submitted for the approval of the secretary of the interior, and plats and patents for the lands thus approved will at once be prepared and forwarded to you" (Rec. 84).

A majority of the swamp land states adopted the method of selection based on the field notes of the government surveys, but the State of Arkansas adopted the other method. Less than four months after the date of the swamp land grant, the general assembly of the state passed an act which provided for commissioners, whose duty it was to proceed immediately to ascertain the swamp and overflowed lands granted by the act, and report the same to the governor, under oath, with

accurate lists of the lands, and the governor was directed to file these lists with the surveyor general.

*Acts of 1850, p. 77, sec. 15.*

By an act of the general assembly, approved January 22, 1855, the commissioners were required "To ascertain and have determined the exact amount of the swamp and overflowed lands which the state has already received, and to which she is further entitled under the congressional grant."

*Acts of 1855, p. 236.*

On December 30, 1856, the legislature passed an act which required the governor to appoint one selecting agent in each county of the state in which there were any unselected swamp or overflowed lands, whose duty it should be to select all the unreported swamp lands lying within the county, and to report to the governor a complete and perfect list of such lands, verified by affidavit. The governor was then required to forward such lists to the proper department for confirmation.

*Acts of 1856, p. 32.*

Under these various acts of the general assembly, provision was made for an actual investigation and inspection, by commissioners and agents, of the lands which the state would select and claim under the congressional grant. As the law presumes that every officer performs his official duty, it must be assumed that these commissioners and agents actually visited

the lands, made a personal inspection and investigation of their character, determined the identical lands which the state would claim, made accurate descriptive lists of them, and reported such lists to the governor. These commissioners and agents are presumed to have disregarded the field notes of the government survey, or, at least, not to have acted upon them as conclusive, for the state, by legislative act, had expressly declared that it would adopt the second method proposed by the secretary of the interior.

If the commissioner and agents actually inspected all the lands embraced within the exterior boundary lines of township 12 north, range 9 east, as the court must presume they did, they must have found that every acre in the township was swamp and overflowed. The field notes of the government survey showed that all the land in the township was of that character except the area in controversy, and the field notes and official plats showed that this area was a lake, instead of land in place. The testimony taken by the government in the present case shows that if this area were not a lake at that time, it was swamp and overflowed land, and more decidedly swampy and overflowed than the lands surrounding it; and the court found as a fact that it was swamp land. Be this as it may, the commissioners were not acting on the basis of the field notes and official plats, and the presumption is, from what the state afterwards did, that they either found that the area in controversy was a lake, or that it was swamp and overflowed land.

The presumption based on the facts disclosed by the present record is that the commissioners found that every acre in the township was of a character to come within the descriptive terms of the swamp land grant, and that they so reported to the governor. In the light of this fact, let us investigate the action of the governor under the letter of instructions and under the circular issued by the secretary of the interior of date November 21, 1850. The circular contains the following provisions:

"Where the state authorities may conclude to have the survey made to determine the boundary of the swamp or overflowed lands, those boundaries alone should be surveyed, taking connection with the nearest section or township corners; or

"Where the swamp or overflowed lands are on the borders of a stream or lake, the stream or lake can be meandered and ordinates surveyed at suitable intervals from the borders of the stream or lake to the margin of the swamp or overflowed lands, and by connecting the ends of those ordinates next to the margins by straight lines, the boundary of the swamp or overflowed lands can be ascertained with sufficient accuracy. In no case, however, shall any such boundary or ordinate be marked in the field, as they may produce difficulties in determining the lines and corners of the public surveys hereafter, and thus lead to litigation" (Rec. 83).

We come now to the important part of the circular, so far as the present case is concerned. Bear in mind that the commissioner reported to the governor that all the land in this particular township was swamp and overflowed. To provide for such a situation, the circular explicitly states:

"Where satisfactory evidence is produced that the whole of a township or of any particular and specified part of a township, or the whole of a tract of country bounded by specified surveys or natural boundaries, is of the character embraced by the grant, you will so report it."

Acting upon the data furnished him, the governor forwarded to the proper officer a list of selections made by the state, which list was marked "A," in which township 12 north, range 9 east, was selected *as a whole township*. The list was filed prior to September 22, 1852, and was approved by the secretary of the interior on May 11, 1853 (Rec. 86, 87).

In this list, which was approved, the whole township was selected. Under the circular referred to, the governor was authorized to select the whole township, if it appeared to him that the entire area within the township was swamp and overflowed. The authority to select the township in this manner was further recognized by the fact that the patent which was subsequently issued conveyed the whole township to the state. But there is this very important distinction between the selection and the patent: The selection was of the whole township, except section sixteen, 14,565.03 acres, without any other description; and it contained no reservation, restriction or limitation that would exclude any land in the township, whether that land was an actual or "plat" lake, or land in place. In other words, the selection was NOT "*according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General.*"

It will probably be contended that the selection of the whole township did not include the area designated as *lake* on the official plat, and reliance will be placed on *Chapman & Dewey Lumber Company v St. Francis Levee District*, 232 U. S. 186. But that case is altogether different from the one at bar, for in that the court was construing a patent in which the description was materially qualified; while in this, it is called upon to construe a selection in which the description does not contain the qualification which was deemed to be controlling in the *Chapman & Dewey* case. In that case the patent described the land as follows: "Township 12 north, range 7 east. The whole of the township (except section sixteen) containing thirteen thousand eight hundred fifteen and sixty-seven hundredths acres \* \* \* according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General." In construing the patent the court said:

"Of course, the words in the patent 'The whole of the Township (except section sixteen)' are comprehensive, but they are only one element in the description and must be read in the light of the others. The explanatory words 'according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General' constitute another element, and a very important one, for it is a familiar rule that where lands are patented according to such a plat, the notes, lines, landmarks and other particulars appearing thereon become as much a part of the patent and are as much to be considered in determining what it is intended to include as if they were set forth in the patent. *Cragin v. Powell*, 128 U. S. 691, 696; *Jef-*

*fries v. East Omaha Land Co.*, 124 U. S. 178, 194. The specification of the acreage is still another element, and, while of less influence than either of the others, it is yet an aid in ascertaining what was intended, for a purpose to convey upwards of 22,000 acres is hardly consistent with a specification of 13,815.67 acres. *Ainsa v. United States*, 161 U. S. 208, 229; *Security Land Co. v. Burns*, 193 U. S. 167, 180; 3 *Washburn on Real Property* (5th ed.) 427. Giving to each of these elements its appropriate influence, and bearing in mind that the terms of description are all such as are usually employed in designating surveyed lands, we are of the opinion that the purpose was to patent the whole of the lands surveyed, except fractional section 16, and not the areas meandered and returned as shown upon the plat, as bodies of water."

*Chapman & Dewey Lumber Co. v. St. Francis Levee District*, 232 U. S. 186.

In the case at bar, the selection is not according to the official plat. The state by legislative enactment had rejected the plat and field notes of the government survey as evidence of the character of the land, and it had appointed commissioners to investigate the subject and make a list of the lands to be selected, based on an actual inspection of the lands themselves. It is shown in this case, and the lower court expressly so found, that the area in controversy, which was designated on the plat as lake, was in fact swamp and overflowed land. It was, therefore, of the character to come within the terms of the congressional grant. The state had every reason for selecting it, and no reason for excluding it from its selection. It had been invited by the secretary of the interior to select a town-

ship as a whole where the facts showed that all the land in the township was swamp and overflowed. It selected this township as a whole. When the list embracing the selection was submitted to the secretary of the interior, it contained a notation of the number of acres in the township, which corresponded to the so-called surveyed acres of the township. The record does not show whether the notation of acreage was made by the governor, or by the surveyor general. The indications are that it was made by the latter, for he certified that the list was a true and correct transcript from the original filed in his office by the governor of the State of Arkansas "with only such modifications as to make the description of the several tracts agree with the plats on file in this office" (Rec. 86). The authorship of the notation is not material, however, for a mere notation of acreage appended to the descriptive terms "the whole township," would not limit a selection under the swamp land grant to the acreage named, when it appears that every acre in the township was swamp and overflowed land, and therefore subject to selection.

"Quantity, in cases of this kind, is regarded merely as part of the description, and is rejected if it be inconsistent with the actual area when the same is indicated and ascertained by known monuments and boundaries."

*Chapman & Dewey Lumber Company v. St. Francis Levee District*, 100 Ark. 105.

*Doe v. Porter*, 3 Ark. 18.



*Towell v. Etter*, 69 Ark. 34.

*Ryan v. Bachelor*, 95 Ark. 375.

*Newsom v. Pryor*, 7 Wheat. 7.

3 Washburn on Real Property, section 2322.

2 Devlin on Deeds, section 1044.

Quantity has far less influence as an element of description in selections under the swamp land grant than in general conveyancing, because the purpose of Congress was to grant "the whole of the swamp and overflowed lands," and acreage was not material.

*McDade v. Levee Board*, 109 La. 625.

"Under a grant, with other surveyed public land, of an entire section to a state in aid of the construction of a railroad, and subsequent patent to the state, the railroad company having constructed the road according to the terms of the grant and received a patent from the state, the United States no longer had any title, legal or equitable, to any part of the section, and if by mistake any part of it was left unsurveyed, its subsequent survey, under order from the interior department, would not have the effect of restoring such land to the public domain."

*Barringer v. Davis*, 120 N. W. (Iowa) 65.

*The Tolleston Club v. State*, 141 Ind. 197.

"A grant of an island by name in the Potomac River, superadding the course and distance of the lines thereof, which on resurvey are now found to exclude a part of the island, will pass the whole island."

*Lodge's Lessee v. Lee*, 6 Cranch 237.

"The general rule in determining what is included in a conveyance is, that general calls for quantity must

yield to the more certain and locative lines of the adjoining owners, which are, or can be made, certain."

*Veve v. Sanchez*, 226 U. S. 234.

"Where land is conveyed by governmental division, the whole division, both within and without the meander lines drawn on the original plat—the wet as well as the dry—passes with the deed; and the fact that the government patent specifies the land conveyed as a fractional part of such a division, naming a number of acres, does not change the rule as to the quantity of land conveyed, for the quantity thus named refers to the fact that that division only contains that number of acres in dry land."

*The Tolleston Club v. State*, 141 Ind. 197.

In citing the foregoing case with approval, this court said:

"The case is stronger if the land passed under the swamp land act, as has been held by the state court in regard to this and similar patents. *Mason v. Calumet Canal & Improvement Company*, 150 Ind. 669; *Kean v. Robey*, 145 Ind. 221; *Tolleston Club of Chicago v. Clough*, 146 Ind. 93; *Tolleston Club v. State*, 141 Ind. 197; *Mitchell v. Samle*, 140 U. S. 406-14."

*Kean v. Calumet Canal Company*, 190 U. S. 459.

And in holding that the description "the whole of fractional sections" in the patent conveyed to the state the entire area within the exterior lines of those sections, notwithstanding the fact that the plat showed that a part of the area was submerged land, and the entire area far exceeded the acreage specified in the patent, the court said:

"It is said that the land under water was not embraced in the survey of 1834. It would seem from the plat and the field notes that the sections and dividing lines were clearly marked off and posts set. The case is similar to *Kean v. Roby*, 145 Ind. 221, where the survey was pronounced sufficient. No difficulty was felt on the ground that the survey did not cover the submerged land in *Hardin v. Jordan*, 140 U. S. 371. \* \* \* The land surrounding the water, at least, was surveyed, so that the identification of the submerged portion was absolute. We are of opinion that the State of Indiana got the title to the whole land in dispute."

*Kean v. Calumet Canal Company*, 190 U. S. 460.

It appears in the case at bar, therefore, that the state intended to select, and did in fact select, the township as a whole, and that the selection included all the land enclosed within the exterior boundary lines of the township. Presumably, the agents of the state had ascertained by actual inspection that all the land in the township was swamp and overflowed, and had so reported to the governor. If, on inspection, the area in dispute was found to be a lake, that was no reason for excluding it from the selection. If, on the other hand, it was found to be swamp and overflowed land, that was a reason for including it. Congress granted "the whole of those swamp and overflowed lands made unfit thereby for cultivation," and the state manifested a purpose to acquire the whole of such lands. It is, therefore, a mere question of the construction of the description employed in the selection. The description is "the whole township." *Prima facie* it included the

area in suit as a part of the land in the township, without any reference to its character as shown on the official plat. But if it is to be construed in connection with the plat, and as limited to the so-called surveyed lands of the township, the description would still *prima facie* include the area in suit, and that would be true whether the area was a lake in fact, or was swamp land erroneously designated on the plat as a lake.

*Little v. Williams*, 88 Ark. 37.

*Crill v. Hudson*, 71 Ark. 390.

*Hardin v. Shedd*, 190 U. S. 520.

We are not left to conjecture, however, or to the rules of construction, to determine what lands the state intended to claim when it selected this township as a whole, or what lands the government understood to be embraced within the selection. We have positive and indisputable proof that both parties intended and understood that the selection should include the area in controversy. Upon the approval of the selection by the secretary of the interior, the register and receiver of the United States land office at Little Rock, acting under instructions from the secretary, made the following entry in the government tract-book kept in his office:

"Whole of section 22, township 12 north, range 9 east. Selected as swamp under act September 28, 1850. Approved May 11, 1853."

"Whole of section 26, township 12 north, range 9 east. Selected as swamp under act September 28, 1850. Approved May 11, 1853."

"Whole of section 27, township 12 north, range 9 east. Selected as swamp under act September 28, 1850. Approved May 11, 1853."

*Tract Book 38, p. 14 (Rec. 80).*

Whatever subtleties may be indulged with reference to the meaning of the phrase "the whole of the township," there can be no dispute as to the meaning of the description "the whole section," which appears in the tract-book. The tract-book does not give the acreage. It does not refer to the sections as being fractional. This is especially significant in view of the fact that the *plat* book in the office showed the sections to be fractional and the respective acreages small.

The entries in the tract-book show that the government officers charged with making up its records understood that the selection of the whole township included every acre in every section in the township. The tract-book shows that every acre in every section of the township in question had been selected by the state, and that such selection had been approved by the secretary of the interior.

This identical question was decided by the Supreme Court of Indiana, in a case which has many times been cited by the Supreme Court of the United States. According to the field notes and the official plat of the government survey, certain sections were shown to be fractional by reason of bordering upon an unsurveyed area which was designated on the plat as a lake, and in the field notes, as an impassable morass.

This lake or impassable morass had been meandered, and the meander line made the abutting sections fractional. In the swamp land lists filed by the state, however, the whole of each of these sections was selected by the state. The case turned on the construction of the description used in the selection. The court said:

"In the lists certified from the general land office, as we have seen, the sections in question are described as: 'All of 12, 15, 17, 18, 20, 21, 22 and NW  $\frac{1}{4}$  of 23.' There can be no doubt of the meaning of this description. It covers all of the sections named, both within and without the meander line."

*The Tolleston Club v. State*, 141 Ind. 206.

Adverting to the lands in controversy, it appears that at the date of the entry in the government tract-book, the whole of sections 22, 26 and 27 had been selected by the state as swamp and overflowed lands, and that such selection had been duly approved by the secretary of the interior. From that date until the year 1910, more than half a century, the government carried these lands on its tract-book as having passed to the state. The state in turn granted the same lands to the defendant, or to those under whom it claims, since which grant it has always treated them as the private property of those parties, subject to state and county taxes, levee and drainage assessments, and other public impositions. In this connection the circular referred to above directed as follows:

"After these selections are approved by the secretary of the interior, the register should enter all the

lands so selected in the district books as 'granted to the state by act of September 28, 1850, being swamp and overflowed lands.'"

The foregoing constitutes a practical interpretation of the selection by the parties in interest, contemporaneous with the selection itself, and it ought to be conclusive upon the courts. The same parties have acted upon the faith of this practicable interpretation during all these years, adjusted their differences on the basis that such interpretation was true and correct, and have permitted and invited innocent third parties to purchase and otherwise deal with the lands on the same basis.

This was the status of the lands in controversy from the date of the approval of the selection, May 11, 1853, until the passage of the act of Congress, approved March 3, 1857. The identical lands had been selected by the state and the selection approved, but no patent had been issued conveying the lands to the state. The act referred to provided as follows:

"All lands selected and reported to the general land office as swamp and overflowed lands by the several states entitled to the provisions of said act of September 28, 1850, prior to March 3, A. D. 1857, are confirmed to said states, respectively, so far as the same remain vacant and unappropriated, and not interfered with by any actual settlement under any law of the United States."

*Act of March 3, 1857; 6 Fed. Statutes Annotated, 409.*

This act in express terms confirmed in the State of Arkansas the title to the lands in controversy. The lands had been selected by the state as included within its selection of the whole township, and had been entered on the government tract-book as inuring to the state under its selection. But even if we treat the selection of the whole township as merely a selection of the so-called surveyed land in the township, such a selection would also have included the area in controversy. As the official plat showed this area to be a lake, the selection of the fractional sections surrounding it would have been in terms a selection of the lake-bed also. And though it should be conceded that there was a mistake in the description derived from the plat, in that the plat showed a lake where none in fact existed, yet, as said by this court, "The description must be taken to have the same effect as if it were true, when we are determining the effect of a conveyance adopting it."

*Hardin v. Shedd*, 190 U. S. 508, 520.

It thus appears that the identical lands in controversy had been selected by the state and the selection had been approved before the passage of the act of March 3, 1857, and that the act in express terms confirmed the title to these lands in the state.

After the passage of the act of March 3, 1857, no patent from the government to the state was necessary so far as the lands in suit were concerned. A patent was in fact issued on September 27, 1858. But the



issuance of the patent under such circumstances was a mere ministerial act, and the patent neither added to nor subtracted from the title which had already been confirmed to the state. If the clause in the patent "according to the official plat of the survey of said lands returned to the general land office by the surveyor general," shall be construed as limiting the lands conveyed by the patent to the surveyed area in the township, then the description in the patent was not as broad as the description employed in the selection. But the failure to include the lands in controversy in the patent would not affect the state's title to these lands, because that title had already vested, and had been confirmed in the state by the operation of the act of March 3, 1857, on the selection made by the state.

In construing the act of March 3, 1857, the Supreme Court of the United States said:

"It will be observed that the selection in the present case was approved by the surveyor general in May, 1852. It seems that, seven years after the passage of the swamp land grant, this failure of the secretary to act had become a grievance, for which Congress deemed it necessary to provide a remedy, by the act of March 3, 1857 (11 Stat. 251), which declares that the selection of swamp and overflowed lands granted to the states by the act of 1850, heretofore made and reported to the commissioner of the general land office, so far as the same shall remain vacant and unappropriated, and not interferred with by an actual settlement under any existing law of the United States, be and the same are hereby confirmed, and shall be

approved and patented to the states in conformity to the provisions of said act.

"If the paper signed by the surveyor general, dated May 18, 1852, was on file in the general land office at Washington, March 3, 1857, we have no doubt that the act completed and made perfect the title of the state of Louisiana to the land in controversy. If this were so, the title of the plaintiff below was superior to the patent issued subsequently to the defendant, for, after the passage of that act, the land department had no right to set aside the selections. The approval of them and the issue of patents to the state were mere ministerial acts in regard to which that department had no discretion, unless it was found that the lands were not vacant, or had been actually settled on adversely to the swamp land claim. The act of 1850 was a present grant, subject to identification of the specific parcels coming within the description; and the selections confirmed by the act of 1857 furnished this identification, and perfected the title."

*Martin v. Marks*, 7 Otto (97 U. S.) 347-8.

In construing the same act, the Supreme Court of Arkansas said:

"The secretary was designated by the act to determine what lands came within it, and his conclusion was manifested as above indicated. In the operation of the system, great delay arose in procuring his approval of the lists forwarded; and on the 3d of March, 1857, Congress passed an act providing that all selections theretofore made and reported to the commissioner of the land office, insofar as the same were vacant and unappropriated, and not interfered with by any actual settlement under any existing law of the United States, should be confirmed. By that act all lands previously so selected and not appropriated or settled on, as therein indicated, were brought within the provisions of the original act, without ascertain-

ment by the secretary. The state's selection of the land in suit had been made and reported to the commissioner, and this act impressed upon it the character of swamp lands, and brought it within the operation of the granting act, unless it came within the exception as land previously appropriated or settled under some existing law."

*Chism v. Price*, 54 Ark. 255.

"In the list certified from the general land office, as we have seen, the sections in question are described as 'All of 12, 15, 17, 18, 20, 21, 22 and NW  $\frac{1}{4}$  of 23.' There can be no doubt of the meaning of this description. It covers all of the sections named, both within and without the meander lines.

\* \* \* \* \*

"We therefore conclude that the whole section, in each case, was fully described in the list, except as to section 23, of which the northwest quarter was described; and that the title to all of the land so described and listed was confirmed to the state by the act of 1857."

*Tolleston Club v. State*, 141 Ind. 206.

That the patent could not have the effect of derogating from the title which had already vested in the state under its selection, and which had been confirmed by the act of March 3, 1857, is a proposition that argues its own force. In passing on this identical question this Court said:

"In the legislation of Congress a patent has a double operation. It is a conveyance by the government when the government has any interest to convey, but where it is issued upon the confirmation of a claim of a previously existing title, it is documentary evidence, having the dignity of a record, of the existence

of that title or of such equities respecting the claim as justify its recognition and confirmation. The instrument is not the less efficacious as evidence of previously existing rights because it also embodies words of release or transfer from the government. In the present case the patent would have been of great value to the claimants, as record evidence of the ancient possession and title of their ancestor, and of the recognition and confirmation by the United States, and would have obviated, in any controversies at law respecting the land, the necessity of other proof, and would thus have been to them an instrument of quiet and security. But it would have added nothing to the force of the confirmation."

*Wright v. Roseberry*, 121 U. S. 488-499.

In this connection we wish to call attention to the difference between the right of the government to correct a mistake in a survey for the purpose of limiting the area of a grant to an individual grantee to the meander line, and its right to correct such a mistake for the purpose of similarly limiting the area of a selection by or patent to a state under the swamp land grant. In both cases, the grant of the fractional sections which appear on the official plat to border on a lake, *prima facie* conveys to the grantee that portion of the bed of the lake which would be included within an extension of the side lines to the center of the lake. But when it is shown, in the grant to an individual, that no lake in fact existed, this overcomes the *prima facie* effect of the patent, and demonstrates that the meander was a boundary line which delimited the area of the grant.

But the case is altogether different under a patent to a state for a fractional section under the swamp land grant. The issuance of the patent is a finding by the secretary of the interior that the lake-bed or supposed lake-bed itself comes within the purview of the swamp land grant. Being embraced within the descriptive terms of the patent when read in connection with the official plat of the survey, it is an identification and segregation of the specific land as land which had passed to the state under the congressional grant. The decision of the secretary of the interior, so identifying and segregating the land, is conclusive. Such being the case, the act of March 3, 1857, confirmed the title to the lands so identified, and after its passage the land department no longer had jurisdiction to change its decision, or to affect in any way the title which Congress had thus expressly confirmed in the state.

"It is said that the land under water was not embraced in the survey of 1834. It would seem from the plat and the field notes that the section and dividing lines were clearly marked off and posts set. The case is similar to *Kean v. Roby*, 145 Ind. 221 where the survey was pronounced sufficient. No difficulty was felt on the ground that the survey did not cover the submerged land in *Hardin v. Jordan*, 140 U. S. 371. But, furthermore, the land was selected as 'swamp and overflowed lands' by the state. It not appearing otherwise the selection must be presumed to have included the land overflowed, and if so it was confirmed to the state by the act of March 3, 1857, c. 117, 11 Stat. 251; Rev. Stat. Sec. 2484. The confirmation encounters none of the difficulties of cases like *Stoneroad v. Stoneroad*, 158 U. S. 240. The land surrounding the water, at least, was surveyed, so that the identification of the

submerged portion was absolute. We are of opinion that the state of Indiana got a title to the whole land in dispute."

*Kean v. Calumet Canal Company*, 190 U. S. 460.

In the case just cited, the government undertook to do exactly what it is attempting to do in the present case. But this Court said:

"The resurvey by the United States in 1874 does not affect the Calumet Company's rights. As the United States had already conveyed the lands, it had no jurisdiction to intermeddle with them in the form of a second survey. *Hardin v. Jordan*, 140 U. S. 371, 400; *Grand Rapids & Indiana Railroad Company v. Butler*, 159 U. S. 87-94-95; *Railroad Company v. Schurmeir*, 7 Wallace, 272-289."

*Kean v. Calumet Canal Company*, *Id.*

All that is said under a later topic of the brief with reference to the practical construction placed by the duly authorized officers of the government on the patent from the government to the state, and the recognition by those officers of the fact that the title to the lands in controversy had passed to and become vested in the state, applies with even greater force to the title acquired by the state under its selection of those lands, and the confirmation of such selection by the act of March 3, 1857. And the argument with reference to the effect of the Compromise Act of April 29, 1898, and the right of the government to go behind the face of the record which the parties acted on in effecting the compromise, is equally applicable to the

title derived through the *selection* as distinguished from the patent, which title the patent at most merely evidenced and confirmed, but did not convey, because it was already in the state.

It may be contended that the area in suit was not surveyed and that, *for this reason*, it was not within the purview of the swamp land grant. And it will probably be argued that it was not public land at all, and could not have been conveyed by the United States to the state by any description. The district court adopted this view. After some discussion of the question, the court, in its opinion, said:

"Unsurveyed lands could, therefore, not be subject to a grant under the act of 1850 and similar acts, as they were not 'public lands.'"

The court seemed to be influenced by the decision in *Sawyer v. Gray*, 205 Fed. 160, which held that "The government survey creates, not merely identifies, sections of land."

In the first place, it is a mistake to call this unsurveyed land. If the area were a lake, it was included in the survey of the littoral shore. If it were not a lake, but land in place, it was still included within the survey, because, in contemplation of law, the side lines which cut the meander line would be considered as projected across this area.

Section 2396 of the Revised Statutes of the United States provides, among other things, as follows:

"Second. The boundary lines actually run and marked in the surveys returned by the surveyor general, shall be established as the proper boundary lines of the section, or sub-divisions, for which they were intended, and the length of such lines, as returned, shall be held and considered as the true length thereof. And the boundary lines which have not been actually run and marked shall be ascertained by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water course, Indian boundary line, or other external boundary of such fractional township."

6 *Fed. Stat. Annotated*, page 367.

The government itself has always taken the position that this area was included in its official survey. The commissioner of the general land office, as late as the year 1909, in a letter to one of the Arkansas congressmen with reference to "alleged unsurveyed lands in Mississippi county, Arkansas," said: "I have the honor to state that *the records in this office do not show that there are any unsurveyed lands situated in said county*" (Rec. 76).

In the second place, it is not true that the area was not public land, even though it should be conceded that it was unsurveyed. The government survey may create sections, quarter-sections, and other subdivisions which depend on the lines and terminology of the public survey, but it does not create public lands. Indeed, it



is only because a given territory is public land that the government has any jurisdiction to survey it at all.

The words "public lands" are habitually used in our national legislation to describe such lands as are subject to sale or other disposition under general laws. Public lands are lands which are owned absolutely by the United States, and which have not been reserved or set apart for any special purpose, but are open to sale or other disposition under the general land laws of the United States.

*Newhall v. Sanger*, 92 U. S. 761.

*Bardon v. Railroad Company*, 145 U. S. 535.

*Minnesota v. Hitchcock*, 185 U. S. 373.

"Only the public lands owned absolutely by the United States are subject to survey and division into sections."

*Leavenworth v. Railroad Company*, 92 U. S. 733-741.

The test is whether the land is owned by the United States, and whether or not it is open to sale or other disposition under general laws, or has been reserved or set apart for some special purpose. The secretary of the interior applied this test when he was petitioned by the levee board to survey these very lands, and he took the position that the United States had no power to order or direct a survey, because the title to the lands had passed from the government to the state under the patent for the township (Rec. 91).

Suppose no interior subdivisional lines had been run in this township, could it be successfully contended that the government, therefore, owned no land in that township, and that it could not convey any land in that township to the state, as it attempted to do under the swamp land grant? To establish such a proposition would be to also establish as its corollary that the United States is wholly without power to dispose of any part of its public domain without first surveying it. It is significant that we have not yet been pointed to any higher power to prevent the government from disposing of its lands without a survey, if it saw fit. As a matter of fact, it has done so in hundreds of cases. It did this with reference to its swamp lands in the State of Florida under the swamp land grant, and it did it under the sanction of the highest officer known to the land department. We quote the following from the opinion of Mr. Secretary Vilas:

“The failure to make a subdivisional survey of the township, can in no wise affect the right of the state under the grant to all of the swamp and overflowed lands, as contemplated by the grant, and the only purpose to be subserved by a subdivision of the township is to enable the secretary to determine whether by such subdivisional survey there might be one or more legal subdivisions, the greater part of which is dry and fit for cultivation. If, however, ‘the whole of a township, or any particular or specified part of a township, or the whole of a tract of country bounded by specified surveyed or natural boundaries, is of the character embraced by the grant,’ a subdivisional survey of the township would not be necessary to enable the secretary to make out a list and plat of the swamp and overflowed lands in accordance with the provisions of the

act, because if 'the whole of the township,' or the whole of a tract of country bounded by specified surveyed or natural boundaries is swamp and overflowed, it necessarily follows that a subdivision of the land would show that the greater part of each smallest legal subdivision is swamp and overflowed, and therefore of the character of lands described in the grant. It was evidently with this view that the instructions of November 21, 1850, were issued, and acting under such instructions the surveyors general in all cases where the whole of a township, or the whole of any particular or specified part of a township, or the whole of a tract of country bounded by specified or natural boundaries was swamp and overflowed, reported such lands to the General Land Office as swamp and overflowed by estimated areas and not by legal subdivisions, and upon such report the commissioner of the General Land Office acted in approving said lists and issuing patents to the state for said lands. This was the prevailing practice of the land department at the date of the act of March 3, 1857, confirming to the state selections of swamp and overflowed lands made and reported to the General Land Office, prior to the passage of said act; and if said practice was not in violation of the act of September 20, 1850, it surely must have been passed with reference to selections made under said practice; and hence confirmed all such selections where the lands were then vacant and unappropriated, and not affected by actual settlement under existing laws.

"The determination of the character of the land rested with the secretary of the interior, and in determining whether the greater part of a legal subdivision was swamp and overflowed, he might cause a subdivisional survey to be made, or if without such subdivision he could by satisfactory evidence determine that the township, when surveyed, would show the greater part of every smallest legal subdivision to be swamp and overflowed, such lands could be listed and

platted in full compliance with the act of September 28, 1850, without such subdivision."

*State of Florida, 8 Land Decisions, 65.*

The court will find in the foregoing opinion an exhaustive review of the right of the state to select land which fell within the swamp land grant, though no survey had been made by the government; and also a full and clear discussion of the effect of a selection of unsurveyed swamp land with reference to the operation of the act of March 3, 1857.

In the third place, the question whether or not the lands were surveyed is wholly immaterial, except insofar as the survey or partial survey may have been resorted to for the purpose of description.

"It is said that *the land under water was not embraced in the survey of 1834.* \* \* \* No difficulty was felt on the ground that the survey did not cover the submerged land in *Hardin v. Jordan*, 140 U. S. 371. But, furthermore, the land was selected as 'swamp and overflowed lands' by the state. It not appearing otherwise, *the selection must be presumed to have included the land overflowed, and if so, it is confirmed to the state by the act of March 3, 1857.*" (The italics are ours.)

*Kean v. Calumet Canal Company*, 190 U. S. 460.

For the same reason it is obvious that the question of a mistake in the survey, or of actual fraud in the survey, is wholly immaterial. Whether or not the survey was properly made, or whether or not it involved a mistake, or was even fictitious or fraudulent, if it in fact furnished a means of identifying the lands, and

the lands were actually of a character to fall within the swamp land grant, then the act of March 3, 1857, confirmed in the state the title to the lands thus identified. Identification, therefore, rather than the integrity of the means of identification, is the vital point.

The holding of the District Court that the lands in controversy were never selected by the state, and therefore were not confirmed to the state by the act of Congress of March 3, 1857, was based, not on the ground that the descriptive terms of the selection did not embrace the lands, but on the ground that the lands "were not 'public lands,' within the meaning of the act of 1850, and until surveyed did not pass by the grant *nor could they be selected*" (Rec. 101). This ruling is not only in conflict with the adjudged cases on the subject, but it was expressly reversed by the Circuit Court of Appeals in the case at bar. That Court sustained the appellant's contention that these lands were selected by the State, and its finding on that point, logically entitled the appellant to a decree in its favor. The only trouble was, that the Court of Appeals apparently overlooked the confirmatory act of March 3, 1857, entirely, and gave no effect to that act, and did not even mention it in the opinion. But the Court did hold as follows:

"In 1839 and 1840, the township (township 12) was surveyed and established, and thereafter in 1841 the subdivisional lines were located and the township sectionized. After the passage of the Swamp Land Act,

*supra*, and in 1853, the state selected the entire township, as authorized by the act, and thereafter, and on the 27th day of September, 1858, all of said township was conveyed by patent to the state. The survey of 1841 meandered the lands in controversy as being a lake. The notes of the survey report the lake and also a bayou, as its outlet to the southwest, as navigable. The lands were platted in accordance with the survey, showing the lake as meandered. It may be conceded that the selection as made by the Governor of the State was of the entire township, and that if the description in the patent had corresponded with the terms of the selection, the lands in controversy, which were represented as being then covered by the lake, would have passed under the patent." \* \* \* "But when the patent was issued some five years later, the description therein given is this: 'Township twelve (12) north, range nine east. The whole of the township excepting section sixteen (16), containing fourteen thousand five hundred sixty-five acres and three-hundredths of an acre, according to the official plats of survey of the said lands returned to the General Land Office by the Surveyor General.'

"And the patent with the lands thus described having been received and accepted by the state, rendered the terms used in describing the lands in the selection irrelevant and immaterial in thereafter determining what lands passed by the patent; so the terms of the selection may be omitted from further consideration" (Rec. 124).

And again, the Court said:

"The only selection of swamp lands made in township 12 by the state is the one above referred to and made in 1853, but the state did not stand on the terms of that selection as made. It accepted the patent of September 27, 1858, with the lands otherwise described, which we think must be taken as a modification of the

terms of its selection, and as adopting for that purpose the description in the patent itself" (Rec. 126).

Here, then, is an express finding in this case that the lands in question were selected by the state in 1853. The selection was approved by the secretary of the interior on May 11, 1853 (Rec. 87). A contemporaneous entry of the selection was made on the tract book in the government land office. The entry specifically included these lands. The entry was as follows: "Whole of Sec. 22, Township 12 N., Range 9. Selected as swamp under act Sept. 28, '50. Approved May 11, 1853." A similar entry was made as to sections 26 and 27 (Rec. 65). This entry remained unchanged for fifty-seven years, or until after the resurvey in 1910. It therefore conclusively appears that the identical lands in controversy had been selected, and the selection approved and entered on the tract books, at the date of the passage of the act of March 3, 1857, and that act provided that "all lands selected and reported to the general land office as swamp and overflowed lands by the several states entitled to the provisions of said act of September 28, 1850, prior to March 3, A. D., 1857, are confirmed to said states, respectively."

As this act confirmed the title in the state, a patent was unnecessary.

*Martin v. Marks*, 97 U. S. 347.

*Wright v. Roseberry*, 121 U. S. 488.

*Chism v. Price*, 54 Ark. 255.

And the subsequent issuance of a patent for a part of the lands included in the selection, with these lands omitted, if they were omitted, could not operate to divest out of the state the title to the omitted lands which the act had confirmed in the state. If A conveys 1,000 acres of land to B, by deed duly executed and delivered, the subsequent delivery by A to B of a deed for 900 acres of the same land would not divest out of B and revest in A the title to the other 100 acres. Title cannot be divested or reconveyed in that manner. And, in the present case, the land officers of the government did not understand that the issuance of the patent, which, under the circumstances, as said by this court in *Martin v. Marks*, *supra*, was a mere ministerial act, had the legal effect of restoring the title to the lands in controversy to the United States, for the entry on the tract book was never changed, and they did not even note on the tract book the fact that a patent was subsequently issued. They either believed, as we think correctly, that the description in the patent, though construed as embracing the surveyed area only, but "according to the official plat" which showed that the surveyed areas abutted on a lake, was the legal equivalent of the description in the selection, and therefore included these lands, or else that the title to the whole of each of these sections, as selected, approved and entered on the tract book, having been confirmed in the state by the act of 1857, no further notation was necessary or material.



The ruling of the Circuit Court of Appeals would undoubtedly have been correct, but for the operation of the act of 1857. In the absence of that act, the selection of these lands, though approved, would not have vested the title to them in the state. A patent would have been required to accomplish that result. The selection, with proof of the swampy character of the lands, was nothing more than a claim that they came within the purview of the swamp land grant, and a request for a patent. And the acceptance of a patent which omitted these lands would have been either a modification of the selection, or merely an acceptance of part of the lands asked for, leaving the request as to the balance still pending and undisposed of. But the passage of the act of 1857 worked a complete change in the status of the selection list which included the lands in controversy, for that act operated as a congressional patent, so to speak, and it had the effect of vesting in the state the title to all the land described in the selection itself.

#### IV.

#### The Arkansas Compromise.

We come now to what is known as the Arkansas Compromise. This Compromise was consummated by an act of Congress, approved April 29, 1898; and the appellant contends, first, that the title to the lands in controversy was expressly confirmed in the appellant's predecessors in title by the third section of the act; and, second, that even if the title was in the state or

in the St. Francis Levee District, a subordinate agency of the state, at the date of the compromise, yet, as the parties to the settlement expressly agreed to accept the records of the land office as the basis for the adjustment of their differences, and as those records showed that the title to these lands had passed from the United States to the state, either by the selection as confirmed by the act of Congress of March 3, 1857, or by the description in the patent, when construed in connection with the official plats of the survey, the United States can no more go behind the record on which the compromise was based for the purpose of showing a mistake in the record, and of recovering lands the title to which appeared by the record to be in the state, on the ground of such mistake, than the state could go behind the same record, for the purpose of showing that other lands which appeared by the record to be high and dry, and therefore not the subject of selection under the swamp land grant, were in fact swamp and overflowed lands, and that the state still had the right, based on the alleged mistake, of selecting such lands, and having them patented to it.

We have attempted to show that the selection, which was not according to the official plats, specifically included the lands in controversy, a point on which we were sustained by the Circuit Court of Appeals. Such being the case, the title was confirmed in the state by the act of March 3, 1857. But, for the sake of the argument, let us concede that the descriptive terms both of the selection and of the patent

embraced only the surveyed area in the township, and that they should be construed as if the call had been "fractional section 22, fractional section 26, and fractional section 27, in township 12 north, range 9 east." As the official plat showed that these sections were made fractional by the existence of a lake within their area, a selection of or a patent to such fractional sections would purport to include the lake as well as the upland. And our contention is, that as the record which by stipulation was adopted as the basis of the compromise purported to show that the title to the supposed lake area as well as to the upland was then in the state, or in the state's grantees, both parties to the settlement are concluded by the record, and each is estopped from asserting that the status of the title was different from what the record on its face purported it to be. The contention invites a careful consideration of the salient facts involved in the compromise agreement.

The Court judicially knows that a long-drawn out controversy existed between the United States and the State of Arkansas with reference to certain financial transactions between the two governments; with reference to the swamp and overflowed lands under the swamp land grant of September 28, 1850; and with reference to other lands under other grants made by Congress to the state. A compromise and settlement of this controversy was made by John G. Carlisle, secretary of the treasury, and Hoke Smith, secretary of the interior, on behalf of the United States, and James P. Clarke, governor of Arkansas, on behalf of the State

of Arkansas, on the 23d day of February, 1895, under the authority conferred on the said secretaries by an act of Congress approved August 4, 1894, and the authority conferred on the governor by an act of the general assembly of the State of Arkansas, approved April 8, 1889. These statutes are as follows:

"AN ACT to authorize a compromise and settlement with the State of Arkansas.

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury and the Secretary of the Interior, or any three persons they may jointly select or cause to be selected on behalf of the United States, are hereby fully authorized and empowered to compromise, adjust, and finally settle with the governor of the State of Arkansas, or with such person or persons as may be authorized by the laws of that State to act in its behalf, upon such terms and conditions as to them may seem just and equitable, subject to approval by Congress, as hereinafter provided, all or any of the differences between the Government and the said State growing out of and arising from the issue of certain bonds by the said State which are now owned in their own right or held in trust by the United States; the five per centum fund which accrued to the said State under the act approved June twenty-third, eighteen hundred and thirty-six; the unpaid portion of the distribution fund which accrued to the said State under the act approved September fourth, eighteen hundred and forty-one; the swamp and overflowed lands in place granted by the act approved September twenty-eighth, eighteen hundred and fifty, and not heretofore approved to the State; the land and money indemnity due the said State under the acts approved March second, eighteen hundred and fifty-five, and March third, eighteen hundred and fifty-seven, and all other claims and demands of what-

ever kind or nature; and any compromise or settlement they may make with the said State shall be fully reported back to Congress, giving the basis thereof, for its further action, said compromise not to be effectual and final until approved by Congress."

28 Stat. L. 229.

"AN ACT to authorize the governor to compromise and adjust, prosecute, and secure all claims of the State of Arkansas against the United States.

*"Be it enacted by the general assembly of the State of Arkansas, That the governor be, and he is hereby, authorized and empowered to enter into negotiations with the proper authorities of the United States, with a view of compromising, adjusting, and settling all or any of the claims of the State of Arkansas that have accrued or that may hereafter accrue under existing and future laws and grants; and he is further authorized and empowered to compromise, adjust, and settle the same upon such terms and conditions as he may deem just and right, after having examined into all the facts in relation thereto, the sum or sums agreed upon for such claim or claims as he may compromise and adjust to be applied upon the bonds of the State owned by the United States. The governor is fully empowered to relinquish and quitclaim to the United States any or all claims or demands adjusted or unadjusted upon the surrender to the State of such of her bonds as he may stipulate for in the compromise."*

*Acts of Arkansas, 1889, p. 164.*

The debits and credits of the controversy, as reported to the House of Representatives from the Committee on Public Lands, to whom was referred Senate bill 502, entitled "A bill to approve a compromise and settlement between the United States and Arkansas," were as follows:

### *Debits.*

"Soon after the admission of the State of Arkansas into the Union the legislature thereof, by act approved October 26, 1836, authorized the issue of \$2,000,000 6 per cent interest bearing coupon bonds of that State, to run thirty years, to aid the Arkansas Real Estate Bank, of that State, and the United States as trustee of the Smithsonian fund invested \$538,000 of that fund in said bonds, getting 538 of such bonds at \$1,000 each. The State was entitled under the act of June 23, 1836 (5 Stat. L., 58), to 5 per cent of the net proceeds of the sale, by Congress, of lands lying within its borders, and the United States withheld these 5 per cent net earnings under section 3481 of the Revised Statutes of the United States, to be applied to the liquidation of the interest of these bonds.

"On December 1, 1860, there had been withheld by the United States \$148,279.72, which the Secretary of the Treasury applied to the redemption of interest coupons. Since that application no moneys so withheld by the United States have been actually applied, and there is an aggregate of accrued and unpaid interest on these 538 bonds of \$495,583.61.

"There has been withheld and not yet applied \$55,116.20, which is entered on the credit side of the account, in favor of the State in this adjustment.

"The United States, as trustee of the Chickasaw fund, also invested \$90,000 of that fund in the bonds of the State of this same issue. The State defaulted in the payment of interest and principal, and the Secretary of the Interior, under the authority of the act of December 13, 1872 (17 Stat. L., 397), made an adjustment with the State of Arkansas in 1874, in pursuance of which the State of Arkansas funded these bonds and interest accrued thereon and issued, under date of January 1, 1874, 252 new 6 per cent coupon bonds, maturing January 1, 1900, on which no interest has been paid, leaving unpaid interest accrued and overdue

on these 252 new bonds from January 1, 1874, to January 1, 1895, amounting to \$317,520. In this adjustment the State was charged with \$65,775 interest after maturity, and there is also charged in this compromise interest on interest amounting to \$82,876.50.

"The United States also holds three 5 per cent registered bonds of that State, purchased out of the Chickasaw orphan fund, with interest accrued thereon from the date of default to the date of maturity, amounting to \$5,700.

"The United States now owns in its own right all of the said bonds of the State of Arkansas, which, with the interest accrued thereon to maturity of said bonds, amounts to \$1,611,803.61; and the State of Arkansas has various claims against the United States under the public land laws of the United States for lands and cash indemnity, which, under the act of August 4, 1894, are to be considered as an offset or counterclaim in this compromise. The claims and counterclaims between the two governments are distinctly set forth in the debit and credit statement of Messrs. Doyle and Ross, marked 'Account,' in which the claims of the Government are given on the debit side of the account, and the allowances conceded by the Secretaries in this compromise on the counterclaims made by the State are shown on the credit side of the account (See Appendix, p. 6).

#### *Credits.*

"The amount of credits claimed and insisted upon by the State overbalanced the amount due the United States (Appendix, p. 219), but in the compromise settlement many of the items were disallowed; all of those allowed were reduced in area if land, and in amount if money, except one, and a balance of \$160,572 was ascertained to be due from the State, which, by the terms of the compromise, the governor agrees that the State will pay, \$572 in cash within 30 days and \$160,000 on or before January 1, 1900; and 160

of the \$1,000 bonds and coupons, due after January 1, 1895, are to be retained by the United States unless the State elects to pay them before their maturity, and, in that event, the payment of all interest accrued thereon to the date of payment shall be accepted in full satisfaction of all coupons, and the same may then be surrendered with the bonds. As the 132,434.27 acres of indemnity land due could be selected from the most valuable non-mineral lands in the State, it was credited to the State at what was shown to be the present value—\$5 per acre.

"The committee think that the credit allowed the State for the indemnity lands should not exceed \$2.50 per acre, the legal price of timber lands, although they may be actually worth more, and they have declared for such reduction in the amendment proposed. It is believed, however, that the small allowance arbitrarily made to the State by the Secretaries for unadjusted swamp lands in place was entirely too small, and should be increased 265,188.54 acres and credited at \$1.25 per acre. From the report of the Commissioner of the General Land Office, 1895, pages 300, 301, it appears that Arkansas has selected 8,656,372.39 acres of swamp land, and that 7,674,005.16 acres have been patented, leaving in dispute 982,367.23 acres. These selections were made prior to 1860, by examinations of the land, and were to be adjusted by proof of the swampy character.

"In 1890 the State agreed to adjust by the Government field notes of the survey, but the examination of all the field notes had not been completed when the pending compromise was made. Lists of 506,260 acres had been made, and it is estimated that there would be over and above that list about 400,000 acres of swamp lands. That already credited in the compromise, when added to what the committee recommended, will only be 60 per cent of her claim. No interest has been allowed the State, either on the \$55,116.20 of 5 per cent money withheld and not applied nor on the



\$148,450 cash indemnity due under act of March 3, 1857. The interest on the 5 per cent money, at 6 per cent for the average period of eighteen years, would be \$63,858.24, and on the cash indemnity from January 1, 1858 (and it was all received before then), would be \$338,466, making a total of \$402,324.24. Exclusive of all interest the State owes \$631,000, and the United States have withheld \$205,108.60 on account of the 5 per cent fund.

“There has been for more than a quarter of a century much controversy over land titles in the State arising from conflicting grants from the United States.

“There are lands the title to nearly all of which is held by purchasers in good faith for value, who bought the same on the strength and credit of the patent of the United States. These titles are confirmed and quieted in the grantees, their heirs, successors, and assigns by section 3 of this bill and absolutely set at rest forever.

“First. The title to all unconfirmed swamp land sold by the State to purchasers in good faith for value, comprising some 36,000 acres, are confirmed in the purchasers with no other or further payment to the State or the United States.

“Second. The title to all lands patented to the State and which the United States afterwards sold or allowed to be entered under the public-land laws, comprising some 105,000 acres, is perfected in the patentees and entrymen when entitled to a patent through the release, quitclaim, and relinquishment to the United States by the State of all her right, title, and interest in and to such lands.

“Third. The title to all lands granted under acts of Congress subsequent to September 28, 1850, the date of the approval of the swamp-land act, some 173,000 acres of which is claimed by the State under the swamp land acts, and the title to nearly all of which

has passed from the original grantees to purchasers in good faith for value, is quieted and perfected in the said grantees under grants made by the United States subsequent to the swamp-land grant, their heirs, successors, and assigns, through the release, relinquishment, and quitclaim by the State to the United States of all right, title, or interest the State may have in and to any of the said lands under the swamp-land acts, which were subsequently granted by the United States under other acts.

“There is nothing which so impedes the progress and development of a State as constant strife and litigation over land titles, and whenever or wherever the United States issues its evidence of title—a patent—such patentee and his assigns should be protected in the unmolested enjoyment of their possessions.”

Report No. 1634, H. R., 54th Congress, 1st Session, p. III.

*The Compromise Agreement.*

“This indenture, made this 23rd day of February, 1895, between John G. Carlisle, Secretary of the Treasury, and Hoke Smith, Secretary of the Interior, under the power and authority conferred by an act of Congress approved August 4, 1894, entitled ‘An act to authorize a compromise and settlement with the State of Arkansas,’ parties of the first part, and James P. Clarke, Governor of the State of Arkansas, acting under the power conferred by the general assembly of the State of Arkansas, approved April 8, 1889, party of the second part, witnesseth:

“That for and in consideration of the agreements and acts of the party of the second part, hereinafter more fully set forth, the parties of the first part by these presents hereby make the following agreement, subject to the approval by Congress:

"1. To surrender to the party of the second part for cancellation 500 6 per cent coupon bonds of \$1,000 each, numbered from 1 to 500, inclusive, dated January 1, 1838, and matured October 26, 1861, issued by the State of Arkansas to secure a loan from the Smithsonian fund, and now held and owned by the United States.

"2. To surrender the coupons attached thereto, representing the unpaid accumulated interest on said bonds, amounting to the sum of \$436,303.61.

"3. To surrender similar bonds of the State under same date (38 in number) of \$1,000 each, numbered 282 to 294, inclusive, 359 to 373, inclusive, and 401 to 410, inclusive, issued to secure a similar loan from the same fund, and matured January 1, 1868, and now owned by the United States.

"4. To surrender the coupons attached thereto, representing the unpaid interest thereon to date of maturity, \$59,280.

"5. To surrender three bonds of \$1,000 each, being State of Arkansas 5 per cent registered bonds, acquired for the Chickasaw orphan fund, with interest thereon from date of default to date of maturity, January 1, 1887, \$5,700.

"6. To surrender 92 of the 252 new 6 per cent coupon bonds, \$1,000 each (Nos. 2099 to 2190, inclusive), issued by the State of Arkansas, January 1, 1874, under the adjustment of the Chickasaw national fund, and maturing January 1, 1900, and now owned by the United States; also all coupons attached to said bonds, representing the accrued interest to January 1, 1895 (twenty-one years), and amounting to \$115,820.

"7. To surrender for cancellation all the unpaid coupons to January 1, 1895, on the remainder of the 252 new 6 per cent (\$1,000 each) Arkansas bonds, being 160 in number, and numbered from 2191 to 2350, inclusive, issued January 1, 1874, under the

adjustment of the Chickasaw national fund, amounting in unpaid interest to \$201,600.

"In consideration of the surrender by the parties of the first part to the party of the second part the bonds, coupons, and accumulated amounts of interest herein above set forth, the party of the second part, by virtue of the powers aforesaid conferred upon him, hereby makes the following agreement, conditioned on the approval thereof by Congress, namely:

"1. To cause to be paid into the Treasury of the United States the sum of \$572 within thirty days after the approval by Congress of this settlement.

"2. To cause to be paid at or before their maturity (January 1, 1900), the remaining Arkansas bonds, being 160 in number, of \$1,000 each, and all coupons attached thereto, as they severally come due, all coupons due on such bonds on January 1, 1895, being surrendered for cancellation, under the terms of this agreement, as above set forth. If the State elects to pay such bonds before their maturity, the payment of all interest accrued thereon to that date shall be accepted in full satisfaction of all the coupons, and the same may be surrendered with the bonds.

"3. As a further consideration for the surrender of the aforesaid bonds, coupons, etc., the party of the second part hereby relinquishes and quitclaims to the United States all claims or demands, adjusted or unadjusted, growing out of the act of September 28, 1850, known as the swamp-land act; also, all land or cash indemnity growing out of the acts of March 2, 1855, and March 3, 1857; also, all claims for indemnity school lands; the residue of the salt-spring lands; the residue of the lands under the court-house and jail grant (act June 15, 1832); the residue of lands under act of September 4, 1841, for internal improvements; the residue of the grant under the acts of March 2, 1831, and June 3, 1836, for public buildings, and all other claims or demands of whatever nature or character.

"The parties hereto agree that the land now patented, approved, or confirmed to the State of Arkansas under the acts of September 28, 1850, March 2, 1855, and March 3, 1857, shall constitute the full measure due the State under the said swamp-land acts, except, however, that the lands described in the following lists shall be patented to the State, namely: List No. 1, containing 12,640 acres, denominated 'Approved, but not listed;' and list No. 2, containing 4,960 acres, denominated 'Confirmed, but not listed;' which lists were transmitted to the Secretary of the Interior on November 17, 1894, by letter 'M' of the Commissioner of the General Land Office.

"It is also agreed that any person who has heretofore filed a declaration of pre-emption, resides on, cultivates, or has purchased, under the laws of the State of Arkansas, any selected and unconfirmed swamp land hereby relinquished to the United States, his heirs or assigns, shall have the preference right for one year from this date to purchase such land from the United States at the minimum price for public lands, under such rules and regulations as may be prescribed by the Secretary of the Interior.

"Nothing in this settlement and agreement is intended to or shall in any connection be held to prejudice the right of the State of Arkansas to assert and establish her title to any lands which were granted or confirmed to her by the said acts approved September 28, 1850, March 2, 1855, and March 3, 1857, insofar as the same is disputed by those claiming under any subsequent grant made or claimed to have been made, the scope and purpose of this settlement being hereby declared to be the adjustment of all disputes between the United States and the State of Arkansas, and to leave undisturbed incidental controversies between said State and other parties in which the United States is not beneficially interested.

"But it is agreed by the party of the second part that any person who has heretofore entered any such

patented, approved, or confirmed swamp lands under the homestead or other law of the United States shall have the preference right for one year, from this date, to purchase such land from the State at the minimum price fixed by law for such land, upon exhibiting to the commissioner of State lands the patent, receiver's receipt, or certificate issued by the United States for such land.

"In testimony whereof we have hereunto subscribed our respective names this the day and year first above written.

J. G. CARLISLE,  
*Secretary of the Treasury.*  
HOKE SMITH,  
*Secretary of the Interior.*  
JAMES P. CLARKE,  
*Governor of Arkansas."*

Report No. 1634, H. R. 54th Congress, 1st Session, pp. 1 and 2.

On April 29, 1898, Congress passed an act approving and confirming the compromise as set forth above, upon certain conditions which are not material to this case.

30 *Stat. L.*, 367.

The appellant contends that at the date of the passage of the foregoing act, the lands in controversy were claimed by persons who had purchased them from the state, and who held the State's deeds for them, and that the title to the lands was expressly confirmed in the claimants by the third section of the act. That section is as follows:

"That the title of all persons who have purchased from the State of Arkansas any unconfirmed swamp

land and hold deeds for the same be, and the same is hereby, confirmed and made valid as against any claim or right of the United States, and without the payment by said persons, their heirs or assigns, of any sum whatever to the United States, or to the State of Arkansas."

The bill filed by the government in the present case alleges the following, among other things, with reference to the disposition of the lands in controversy by the State of Arkansas:

"IV. No attempt has ever been made by the State of Arkansas to assess the lands hereinbefore described until about the year 1882, when the State began to assess the said lands for taxes. The taxes so assessed were not, nor were any of them, paid by the plaintiff, and the State has from time to time attempted to sell all of said lands for the delinquent taxes so assessed, and in pursuance of said tax sales has issued from time to time thereon tax deeds, respectively purporting to convey the title thereto. The defendant, Lee Wilson & Company, claims title to all of the lands mentioned and described in Paragraph II hereof, under and by virtue of certain of said tax sales and tax deeds, made, executed and delivered by the county clerk of Mississippi County in some instances; under and by virtue of decrees of the Chancery Court of Mississippi County attempting to confirm in the Board of Directors St. Francis Levee District title to said described lands; under and by virtue of attempted conveyances to the said defendant, Lee Wilson & Company, made by certain other grantors including the said St. Francis Levee District, more fully set forth in Paragraph V hereof.

"V. The defendant, Lee Wilson & Company, claims to derive title to the lands embraced and described in Paragraph II hereof as follows:

"Under date of September 12, 1859, the State of Arkansas issued to W. B. Waldron its patent purport-

ing to convey Section 22, Township 12 North, Range 9 East, which said patent was recorded in the State Land Office at Little Rock, Arkansas, on the      day of      , 18      . Under date of June 11, 1873, the said W. B. Waldron and wife made, executed, acknowledged, and delivered to the Memphis & St. Louis Railroad Company, a deed embracing said Section 22, which said deed was recorded on July 11, 1873, in Deed Record 5, at page 136; under date of March 27, 1885, the County Clerk of Mississippi County made, executed and delivered to the State of Arkansas, in pursuance of an overdue tax decree pronounced on the 23rd day of February, 1883, a deed embracing said Section 22, which said deed was recorded in Deed Record 15 at page 36. The said sale to the State of Arkansas was duly confirmed on July 22, 1884, as appears by Chancery Record 2, page 256; under date of December 12, 1894, the Chancery Court of Mississippi County rendered its decree attempting to confirm the title to said Section 22, as well as the north half of the north half (N.  $\frac{1}{2}$  N.  $\frac{1}{2}$ ) Sec. 26, Township 12 North, Range 9 East, 5th Principal Meridian, and all of Fractional Sec. 27, in the St. Francis Levee District; under date of June 6, 1898, the St. Francis Levee District made, executed and delivered to one William Hunter, a deed to said Section 22, as well as all of fractional Section 27, which said deed was recorded June 28, 1898, in Deed Record 21, page 568;" and the bill then sets forth the chain of conveyances from William Hunter to the defendant.

The prayer of the bill, among other things, is as follows:

"That all of the said taxes, assessments, decrees of confirmation, insofar as they purport to affect the title to said lands, and the attempted sales and conveyances of said lands, may be declared void, cancelled, and held for naught; that all of the said conveyances in the possession of the defendants or either or any of them, wherein they purport to convey title to said



lands, or any part thereof, may be delivered up and surrendered by the said defendants under the court's command for cancellation; that the court before which the said proceedings to obtain confirmation of title to said lands were had may be decreed to have acted illegally, and without authority therein, and the proceedings therein held for naught; that all of said taxes, assessments, sales, deeds, proceedings and conveyances be decreed and held to be clouds upon the title of the plaintiff to said described lands, and as such be removed; that the defendants herein may be ordered, adjudged and decreed to execute and deliver to the plaintiff a good and sufficient deed or deeds conveying the said lands free and clear of all liens, incumbrances, outstanding claims or clouds whatsoever, caused or created by the said defendants respectively, to the plaintiff in fee absolute, and in default thereof the plaintiff may be entitled to record said decree which, when recorded, shall operate as a deed conveying said lands to the plaintiff" (Rec. 21, 22).

According to the allegations of the bill, therefore, the state conveyed these lands by patent to W. B. Waldron in 1859, and the title passed by mesne conveyances from Waldron to the defendant. Such being the case, the lands fall squarely within the purview of section 3 of the act of 1898, and that act confirmed the title in the appellant, or in its predecessors in title.

But, if the allegations of the bill be departed from and it be said that the patent from the State to Waldron described the land granted as fractional sections 22, 26 and 27, the legal effect is just the same. The official plat, from which the descriptive terms were taken, showed that the sections were made fractional by a

meandered lake, which is the area in controversy. And this court has held, in construing the description in a patent based on a plat which showed a meander line, that though it should develop that there was a mistake in the meander, the description must be taken to have the same effect as it would have had if the line had been a true meander line, in determining the effect of a conveyance adopting it.

*Hardin v. Shedd*, 190 U. S. 520.

The Supreme Court of Arkansas has held that a tax deed for a fractional quarter section, which gave the acreage of the surveyed portion, also passed the title to the accretion, though its acreage was many times that of the surveyed area.

"A sale of 'the northeast fractional quarter of section 18, township 8 south, range 3 west, 10.88 acres,' for delinquent taxes, carries an accretion of 148.91 acres, as the area given does not control the general description."

*Crill v. Hudson*, 71 Ark. 390.

And, again, the same court held:

"The legal effect of the patents to the state of the fractional sections and parts of sections surrounding the meandered lines of the lake, according to the official plats of the public survey, was to convey all riparian rights, and by virtue thereof to vest *prima facie* title to the bed of the lake, as shown on the plats, from meander shore lines to center. The conveyances executed by the state in turn to its grantees had the same effect."

*Little v. Williams*, 88 Ark. 50.

It appears, therefore, that prior to the passage by Congress of the act of 1898, the state had conveyed the lands in controversy by patent to W. B. Waldron, under whom the defendant claims. Whether there was a mistake in the survey or not, or whether a lake existed in fact or not, the patent from the state to Waldron vested *prima facie* the title in him. The title was conclusively in Waldron as against all the world except the United States. Both the state and the United States, during the negotiation of the compromise, and at the date of the act which made it effective, regarded and treated the title as in Waldron or his successors. The books kept by the land department of the government showed specifically that the title to these lands had passed out of the United States and became vested in the state, and the records of the state showed that it had passed from the state to Waldron and those who claimed under him. Treating it as private property, the state had subjected it to taxes and to all public impositions, and it had been so subjected from the date of the original patent from the state to Waldron. The lands had been sold for state and county taxes, and those who claimed under the tax sales had procured a decree of the chancery court of Mississippi County confirming the title in them. With a full knowledge of all these facts, and with a declared intention of recognizing the title thus disposed of by the state, the act of congress provided that this title should be and is hereby "confirmed and made valid as against any claim or right of the United States,

and without payment by said persons, their heirs, or assigns, of any sum whatever to the United States or the State of Arkansas."

It may be urged that while the deed from the state to Waldron purported to convey this title, it did not in fact convey it, because of the existence of a mistake in the survey. If such be the case, it is the very situation which congress was attempting to meet. If the title had actually passed to the state and through it to defendant's grantor, no confirmation by congress was necessary. If the title had not actually passed to the state and through it to the defendant's predecessor, a confirmation of his title by congress was necessary to protect him. This was the relief which congress intended to grant, and which it did grant in the most explicit terms. Every deed executed by the state to swamp lands which had not been patented or confirmed to it, only *purported* to convey the title. Such a deed could not operate to convey title in fact, because the title was in the government, and not in the state. Nevertheless, such deeds purported to convey the title, and congress undertook to confirm this purported title by making it valid.

There is a stronger reason for holding that the compromise act confirmed the apparent riparian title to this land in the defendant's grantor than there would be for holding that it would confirm the title to a full section which had never been patented by the government to the state. Suppose that section 1 in this

township had been excepted from the state's selection and from the government's patent to the state, and that the state had conveyed section 1 by deed to John Smith. In such a case there would have been no basis whatever for the deed from the state to John Smith, except the right of the state to subsequently select that particular section and acquire title to it by a patent from the government. Yet the compromise act would undoubtedly have confirmed the title in John Smith, because such a conveyance would have fallen within the express terms of the third section of the act. In the present case, however, the *prima facie* effect of the government's patent was to vest the title to the area called "lake" in the state, and likewise the *prima facie* effect of the deed from the state to the defendant's grantor was to vest the title in him. By such conveyance, the state's grantee became invested with the *prima facie* title to these lands both as against the government and the state, and this title was conclusive as against the rest of the world. The equity of the defendant is very much stronger than would have been the equity of John Smith, because the defendant purchased the *prima facie* title in reliance upon the good faith of the government and of the state, and with assurances which sprang from the face of the record that it was acquiring a perfect title. Upon what principle of justice or fairness, then, can the compromise act be so construed as to protect John Smith and not to protect the defendant? Such a construction would give more importance to the

shadow than to the substance, and would protect the weaker equity while ignoring the stronger.

Passing, now, from a consideration of the effect of the third section of the act of April 29, 1898, we come to the broader proposition that the whole genius of the compromise agreement is opposed to the claim asserted by the United States to the lands in suit. And the proposition is bed-rocked on the universal principle that if two parties agree, as a foundation for the adjustment of their differences, that a certain record shall be accepted as conclusive of the facts which appeared on its face, neither party will afterwards be permitted to falsify the record for the purpose of claiming something which was assumed, in the compromise based on the record, to be the property of the other.

Now, it is a well-known fact, as shown by the correspondence between the secretary of the interior and the governor of Arkansas, the opinions issued by the land department, the provisions of the acts which the state was required to pass as conditions precedent to further negotiations, and the debates in Congress on the bill for the act to confirm the compromise, that in all the negotiations leading up to the settlement, and in the settlement itself, the United States and the state dealt with each other on the basis of the facts as they appeared on the face of the records.

In this connection we wish to call attention at this point to a few of the opinions rendered by the Secre-

tary of the Interior and by the Land Commissioner with reference to the status of the title to the lands in controversy, and also to the attitude assumed by the government with reference to the same subject prior to the compromise act, and for a number of years succeeding its passage. The opinions in question were frequently referred to in the debates in Congress, and some of them are incorporated in the congressional record. While at that time no mistake in the survey had ever been asserted by the government, the possibility of a mistake had frequently been considered by the land department, so that the situation with reference to the title to the lands which appears on the present record, according to the contention of the government, was at least potentially in the minds of the land commissioner, the Secretary of the Interior, and of Congress as well, throughout the period covered by the negotiations which culminated in the compromise act.

Some of the opinions and letters referred to are as follows:

Little Rock, March 31, 1885.

Hon. L. Q. C. Lamar,  
Secretary of the Interior,  
Washington, D. C.

Sir:

I have the honor to transmit herewith, a duly certified and authentic copy of "An act to better facilitate the adjustment of the differences between the State of Arkansas and the United States, arising under the grant by the United States to this state of Swamp and Overflowed lands, under the act of Congress, approved Sept. 28, 1850" approved March 17, 1885.

The state has from time to time made ample provision for the protection of the rights of settlers upon any of these lands, so that such claims cannot be impaired or abridged in any manner. I respectfully request your acceptance of, and consent, on the part of the United States, to the proposal of the state therein made, and that I may be informed thereof at your early convenience.

I have the honor to be, with great respect,

Your ob't Serv't,

Simon P. Hughes,  
Governor of the State of Arkansas.

(Rec. 69.)

Department of the Interior,  
Washington.

To His Excellency Simon P. Hughes,  
Governor of the State of Arkansas.

Sir:

In reply to your communication of the 31st of March, 1885, enclosing a copy of the Act of the Arkansas Legislature with reference to the adjustment of swamp lands in the borders of the state of Arkansas, approved March 17, 1885, I have the honor to reply that I cannot accept the mode of adjustment provided for in the Bill.

I submitted yours to the Commissioner of the Land Office for report thereon, and herewith enclose a copy of the report.

From the provisions of the Bill and the facts, as shown by the records of the land office, it would seem that the mode of adjustment suggested would leave the subject involved in substantially the same difficulties that now exist. I would call your attention to the mode of adjustment adopted with reference to the states of Ohio, Michigan, Minnesota, Mississippi, Alabama and Wisconsin, as shown by the report of the Commissioner of the land office, and respectfully suggest for



your consideration, whether that basis would be acceptable to the state of Arkansas.

I have, sir, the honor to be, with great respect,

Yours truly,

L. Q. C. Lamar,

August 15, 1885.

Secretary.

(Rec. 70.)

Department of the Interior,  
Washington, Aug. 28, 1885.

R. V. Yeakle, Esq.,

Agent for the State of Arkansas,

Sir:

In reply to your communication of the 21st instant to this department, relative to the claims of the state of Arkansas against the United States for certain swamp lands located within said state, while it may be possible that the facts set forth in your letter render the objectionable provisions of the Act passed by the legislature of Arkansas immaterial and unimportant, yet, as they seem to be conditions or qualifications of the governor's power to act in the case, they could not be waived.

Such being the case, and believing that the field notes of survey as found in the General Land Office constitute the only basis for determining the character of the land claimed by the state, I must adhere to the mode of adjustment laid down in my letter to His Excellency, Simon P. Hughes, Governor, dated the 15th instant.

This department will afford the agent of the state of Arkansas full facilities for examining the field notes of survey relating to these lands, so that on amendment of the Act passed by the legislature of Arkansas, the adjustment can be speedily and satisfactorily made.

Very respectfully,

L. Q. C. Lamar,

(Rec. 70.)

Secretary.

Department of the Interior,  
General Land Office.

Washington, D. C., March 27, 1886.

Hon. S. J. Landes,  
House of Representatives.

Sir:

Referring to your oral request for an opinion on the Bill (H. R. 131) "for the adjustment of the claim of the State of Arkansas against the United States," which provides for a commission to adjust the claims of said state under the several Acts of Congress relating to swamp and overflowed lands, I have to say that by the decisions of the Hon. Secretary of the Interior, dated Aug. 15" and 28," 1885, said state was allowed to adopt the field notes of the public surveys as the basis for adjustment of her claims under said acts. This plan was accepted by the state authorities, and on Feb. 18, 1886, the governor informed the department that an agent of the state had been appointed to examine the field notes and present her claims for adjustment, and said agent is now making such examination.

In view of these facts, I am of the opinion that no further legislation is necessary.

Very respectfully,

Wm. A. J. Sparks,  
Commissioner.

(Rec. 71.)

Department of the Interior,  
General Land Office.

Washington, D. C., Aug. 25, 1894.

The Honorable,  
The Secretary of the Interior.

Sir:

I am in receipt, by your reference of July 24, 1894, for report in duplicate and return of papers, of a letter addressed to you, dated June 25, 1894, from the

secretary of the St. Francis Levee Board transmitting one from H. N. Pharr, Chief Engineer of the St. Francis Levee District, of even date, in which he states that the St. Francis Basin has an area of 6,000 square miles extending from Commerce, Missouri, to the mouth of the St. Francis River in Arkansas, about 200 miles in length, with an average width of 30 miles; that the Mississippi River bounds the basin on the east, while the St. Francis River and its tributary, Little River, lies along or near its western border; that the surface of the basin inclines from the bank of the Mississippi westward to the St. Francis, and as a rule the drainage of the whole basin is in that direction.

That the citizens of that territory are organized into two levee districts, one in the State of Missouri, and the other in the State of Arkansas, and are now engaged in building a levee along the front of that basin to protect it from overflow by the Mississippi River; that at the time the territory was surveyed and sectionized by the government, there was a considerable part of the whole occupied by lakes and swamps "which were not surveyed, and that they were meandered, which means that they were not surveyed in, but surveyed out."

That the numerous overflows since then have filled up those lakes and swamps very much and changed largely the general features of the country to such an extent that the areas and depths of the lakes and swamps have been very much reduced, and around their margins forests of large timber now stand on space then occupied by water; that this filling up increases the possibilities of drainage, and recent cross-sections of that basin show that the whole can be drained into the St. Francis and Little Rivers.

That such drainage is indispensable to the maintenance of the levee, etc., and that there is a chain of these lakes lying near the river following its course with considerable uniformity, the seepage from which

is very destructive to the banks, "and in locating the levee, two considerations forced the location between these lakes and the river, one, much the higher ground lay in front of the lakes, the other, a desire to protect, as far as possible, the property of our citizens."

That to maintain that location, these lakes must be drained, and he asks how it can be done, suggesting that the general government in which he is informed that the title to "these unsurveyed lands yet remains, donate these lands to the states, or to the levee boards, to be expended in their drainage," and that they will ask Congress at its next session to donate these lands for that purpose; that it has been suggested that an accurate description of the lands asked for would be necessary, which would necessitate a survey, and if that should be held, it is a matter of much importance to the land owners and other citizens of that large territory that the survey be made in time to make it available for use next winter.

The letters appear to have been originally referred to the department by Hon. P. D. McCulloch, House of Representatives, and subsequently forwarded to the War Department for consideration.

They were returned to this department from the Secretary of War, who invites attention to the 4th indorsement thereon, by General C. B. Comstock, president of the Mississippi River Commission, to which the attention of this office is also directed by you. It reads as follows:

"The Mississippi River Commission,  
President's Office,

New York, July 10, 1894.

Respectfully returned to the Chief of Engineers.

The Mississippi River Commission has made an allotment of \$88,000 per year for each of the fiscal years 1894, 1895 and 1896, for levees along the St. Francis front on the Mississippi River from New

Madrid to the mouth of the St. Francis River, and if funds are hereafter supplied by legislation, will probably continue to make allotments for the same purpose.

The completion of the system of levees will greatly enhance the value of the lands behind them, and the question arises whether the United States should not retain all lands in the St. Francis basin which it now holds, with a view to finally selling them and thus partially reimbursing itself for its expenditures on levees on the St. Francis front, which will probably ultimately amount to some millions of dollars.

C. B. Comstock,

Col. of Engineers, Bvt. Brig. Gen. U. S. A.

Pres. Miss. River Com'n."

In reply I have the honor to report on the subject in a general way, that under U. S. Supreme Court decisions it is held by this office that when, in the extensions of the lines of the public surveys, a lake is meandered, its area is segregated from the public domain, and beds of inland non-navigable meandered lakes or lands uncovered by the recession of the waters of such lakes from natural or artificial causes, since the survey and disposition of the adjacent shore land, do not belong to the United States but to the riparian owners.

See U. S. Supreme Court decisions in the cases of *Hardin v. Jordan* and *Mitchell v. Smale*, 140 U. S. 371, 406; also Department decisions in the cases of *F. M. Pugh et al.*, 14 L. S. 274, and *Pruzynske v. Winona and St. Peter R. R. Co.*, *Idem*, 637.

In view of the foregoing, I do not see that the government has any authority to survey or dispose of the lake beds referred to in the letters transmitted by you for the purposes indicated therein.

The letters are returned herewith as directed.

Very respectfully,

Edw. A. Bowers,

Acting Commissioner.

(Rec. 72.)

Department of the Interior,  
General Land Office,

Washington, Nov. 30, 1894.

The Commissioner of the General Land Office,

Sir:

On July 24, 1894, there was referred to your office for a report a communication, dated June 26, 1894, from the secretary of the St. Francis Levee Board, transmitting one from H. N. Pharr, Chief Engineer of the St. Francis Levee District, of even date, in which he gives the extent and approximate area of the St. Francis basin—extending from Commerce, Missouri, to the mouth of the St. Francis river—its situation, surroundings and character; levee districts in the basin, and the situation of the levees; also stating that numerous meandered lakes and swamps existed in said basin; the change in those lakes, their reduction in size and depth consequent upon the overflow of the Mississippi River, the possibilities and feasibility of draining those lakes, and the necessity therefor, to prevent the levees from injury by seepage from the lakes, etc.

Said letter assumes that the unsurveyed lands (i. e., the lakes and swamps in the basin which were meandered by the public surveys) belong to the government, and that the only way to maintain the location of the levees is to drain the lakes. It was further stated that Congress would be asked at its next session to donate these lands for drainage purposes, and that such contemplated action by Congress would necessitate a survey of the lands; hence the survey was applied for.

On July 24, 1894, these communications were referred to your office, "for report in duplicate and return of papers, with expression of views, etc."

I am now in receipt of your office letter ("E") of August 25, 1894, in which you give it as your opinion that the government has no authority to survey or dis-

pose of the lake beds referred to in said communication, citing as authority therefor the cases of *Hardin v. Jordan*, and *Mitchell v. Smale* (140 U. S. 371, 406) and departmental decisions in re *F. M. Pugh et al.*, 14 L. D. 274, and *Pruszyński v. Winona & St. Peter R. R. Company*, *idem.*, 638.

Assuming that the lands contiguous to and surrounding the meandered lakes have long since been disposed of, it would seem, under the authorities cited, that the government has no jurisdiction over the same, and therefore no power to order or direct their survey. You will so advise the secretary of the levee board.

The papers are herewith transmitted.

Very respectfully,

Hoke Smith,  
Secretary.

(Rec. 74.)

It will be seen from the foregoing that at the request of the United States, the State of Arkansas changed its method of selecting swamp lands, and agreed to adopt the field notes and official plats of the government survey as the basis of adjusting the swamp land controversy between the two sovereignties. According to the field notes and the official plats, the title to the land in controversy had *prima facie* passed out of the government, and was either in the state or in the state's grantees at the time of the negotiation and confirmation of the compromise. Both parties accepted this status and acted upon it as the basis of the adjustment. Not only was this true, but the Secretary of the Interior had expressly held that the government no longer had jurisdiction to survey the areas which were embraced within the meander lines appearing on

the official plats, which areas were designated as lakes on the plats. The Secretary of the Interior, Mr. Hoke Smith, in an opinion to the commissioner of the general land office, rendered on November 30, 1894, advised the commissioner as follows:

"Assuming that the lands contiguous to and surrounding the meandered lakes have long since been disposed of, it would seem, under the authorities cited, that the government has no jurisdiction over the same, and therefore no power to order or direct their survey."

The foregoing opinion was given in response to a letter to the Secretary of the Interior from the Commissioner of the General Land Office, in which the latter stated "that at the time the territory was surveyed and sectionized by the government, there was a considerable part of the whole occupied by lakes and swamps which were not surveyed, that is, they were meandered, which means that they were not surveyed in, but surveyed out."

We are not contending at present that the government is either bound or estopped by the opinions of the Commissioner of the General Land Office, or of the Secretary of the Interior, or of any other officer. We are merely pointing out the fact that the very condition disclosed by the present record was in the mind of the officers who were delegated by the government to negotiate a compromise between the United States and the State of Arkansas of all differences between them growing out of their transactions under the swamp



land grant. Having this situation in view, and adopting it as one of the bases for the compromise, it ought to be held that the government has expressly agreed that the situation should remain as a fixed status, and that the compromise act should be so interpreted as to produce the result which was evidently in the contemplation and intention of the contracting parties.

For twelve years following the date of the compromise act, the government officials entertained the same view with reference to the titles to these lands, and repeatedly refused to alter their attitude or to change their position with reference to the same. This was a practical interpretation of the status of the title to these lands, and should be given great weight by the courts in passing on these questions. We call attention to the following opinions:

Department of the Interior,  
General Land Office,

Washington, D. C., June 23, 1902.

Hon. James K. Jones,  
U. S. Senate.

Sir:

I am in receipt of your letter dated June 17, 1902, enclosing one dated Blytheville, Mississippi County, Arkansas, June 13, 1902, from Mr. C. L. Moore, addressed to you, requesting information relative to obtaining title to certain lands within the area of Clear Lake in section 25, T. 15 N., R. 11 E. 5th P. M. Arkansas.

He states that at the time of the U. S. Survey of said township the section was fractional and abutted upon the lake, but that since that time the lake has

shrunk so that a piece of land exists  $\frac{1}{2}$  a mile wide on one part and over  $\frac{1}{4}$  of a mile at the narrowest part.

In reply I have the honor to state that the official plat shows said lake to have been fully meandered at the time of the subdivision surveys in the township, and at that time covering parts of sections 23, 24, 25, 35 and 36.

When in the extension of the lines of the public surveys a lake is so meandered, its area is segregated from the public domain, and the beds of such lakes or lands uncovered by the recession of the waters thereof since the survey and disposition of the adjacent lands are not regarded as public lands of the United States, subject to survey and disposal as such; and in this connection I respectfully invite attention to the U. S. Supreme Court decision in the case of *Hardin v. Jordan*, 140 U. S. 371, where it is held (syllabus) that:

"Grants by the United States of its public lands bounded on streams and other waters, made without reservation or restriction, are to be construed, as to their effect, according to the law of the state in which the lands lie" and that, "by the common law, under a grant of lands bounded on a lake or pond, which is not tide water, and is not navigable, the grantee takes to the center of the lake or pond, ratably with other riparian proprietors if there be such."

The letter transmitted by you is returned herewith.

Very respectfully,

Benj. Hermans,  
Commissioner.

(Rec. 75.)

Department of the Interior.  
Washington, Nov. 17, 1902.

The Commissioner of the  
General Land Office.

Sir:

The department is in receipt of your letter of June 2, 1902, relative to an alleged trespass upon what you term the unsurveyed lands in the northeastern part of Arkansas, known as the "sunk lands of the New Madrid earthquake."

The alleged trespassers are persons who claim to have purchased said lands from the board of directors of the St. Francis levee district, created and organized by the act of the legislature of Arkansas of February 15, 1893, which fixed the boundaries of said district and empowered and made it the duty of said board to levy annually a tax on all lands in said levee district, to be assessed according to the increased value or betterment estimated to accrue from protection against floods from the Mississippi River by reason of the construction of levees. At the same session the legislature of the state passed an act (March 29, 1893) donating to said district, for the purpose of building and maintaining levees, all the lands of the state lying within said district, except the sixteenth section, and all right, title or interest that the state had or might acquire to any lands within said district, except the sixteenth section, during the five years immediately after said act, by reason of forfeiture for taxes.

A special agent of your office states in his report that in an interview with the officers of said board he learned that it claimed title to the lands in question under said act of March 29, 1893, and also bases its claim upon letters from your office and from the secretary of the interior, declaring, in effect, that if the unsurveyed lands, known as the "sunk lands," were, at the date of the township surveys, covered by bodies of water and were afterwards uncovered by the reces-

sion of the waters, such lands would belong to the owners of the adjacent lands as riparian proprietors, and the United States would have no authority to survey and dispose of them, assuming that the lands contiguous to and surrounding the meandered waters have been disposed of. The special agent expresses the opinion that there is no doubt that at the time of the township surveys these lands were simply covered by the overflows of the Mississippi River, and that they must be classed as agricultural lands, and not as covered by permanent bodies of water and therefore subject to state or riparian ownership; that "some of these lands are five miles wide and are covered with the finest timber, which is exceedingly valuable, and when cleared will make fine cotton and corn plantations and become some of the most valuable ones in the state." You recommend that steps be taken to enjoin the St. Francis Levee Board from disposing of any of said lands and that the purchasers of the lands from said board be enjoined from cutting any timber thereon.

The lands in question are in townships 11 to 16 N., inclusive, in range 6 E., and in townships 12 to 17 N., inclusive, in range 7 East, which were surveyed at different times from 1841 to 1849. The field notes and the plats of these surveys show that what are now reported to be unsurveyed lands were at the date of the township surveys covered by permanent bodies of water that were meandered as lakes and rivers, having a depth, as shown by the field notes, varying from 5 to 15 feet. A large portion of the surveyed lands lying along the meander lines are designated in the field notes as overflowed and unfit for cultivation.

The letter of your office and the letter of the secretary of the interior, referred to by the special agent as a basis of the claim of the levee board, were written in response to a communication from the chief engineer of the St. Francis Levee District, of June 25, 1894, to the Secretary of the Interior, in which, referring to

the fact that the unsurveyed part of said townships consisted of lakes and swamps, he says:

"The numerous overflows since then have filled up these lakes and swamps very much, and changed largely the general features of the country. To such an extent has this filling been done, that the areas and depths of these lakes and swamps have been very much reduced and around their margins forests of large timber now stand on space then occupied by water. This filling up increases the possibility of drainage, and recent cross-sections of that basin show that the whole can be drained into the St. Francis and Little Rivers."

He stated that he was informed that the title to these unsurveyed lands yet remains in the government, and as the drainage of the lakes in the St. Francis basin is necessary to the maintenance of the levees, he suggested that the lands be donated to the state or the levee board for the purposes stated. \*

Said letter having been referred to your office, it was stated in response thereto, by letter of August 25, 1894, that "when, in the extension of the lines of public surveys, a lake is meandered, its area is segregated from the public domain, and beds of inland non-navigable lakes or lands uncovered by the recession of the waters of such lakes from natural or artificial causes, since the survey and disposition of the adjacent shore lands, do not belong to the United States, but to the riparian owners." The department, by letter of November 30, 1894, concurred in the views of your office and stated that from the facts then appearing the government had no jurisdiction over said lands and no power to direct their survey.

It appears from a communication by the chief engineer of the St. Francis Levee District, dated September 3, 1901, set forth in your letter, that this matter was brought to the attention of the department in 1894, with a view of having the lands surveyed and disposed of by the government if it still holds the title. The

purpose of the board was to have the title of the government divested if it had any, so that the lands might pass into private ownership in order that they may be subject to the tax for their proportion of the cost in constructing levees. He says:

"If the General Government has no jurisdiction of these unsurveyed lands and does not claim any, and if a survey of them can not therefore be made by the government, then it is the purpose of our board to have them surveyed and sell them or quit-claim them and place them on our levee tax books, so that they may be taxed for levee purposes and therefore pay their proportion towards the construction of the levees and drains by which they have been and are being so greatly improved and benefited. If the General Government will survey them so that we can tax them when parties buy them from the government or homestead them, then our purpose will be equally accomplished."

It is not questioned that the portions of said townships which are represented on the plats of survey as bodies of water are now valuable lands. On the contrary, the chief engineer states that he knows of his own personal knowledge that farms of great value are now cultivated in the very bottom or lowest places of some of these unsurveyed lands, but he adds: "All of this conversion of these low lands is of course due to our levees keeping the overflow out of the low lands, and our drainage systems which afford them drainage."

It may be mentioned in this connection that by the agreement between the United States and the State of Arkansas, entered into February 23, 1895, and ratified by the act of April 29, 1898 (30 Stat. 367) the State of Arkansas relinquished to the United States all claim to the swamp lands in said state, except such as had been patented, approved or confirmed to the state at the date of said agreement, but said act of April 29, 1898, confirmed the title of all persons who had purchased from the state any unconfirmed swamp land

and had received a deed for the same. As these lands had not been patented, approved or confirmed to the state and had not been sold by the state to any person, except perhaps one tract which it is alleged had been sold prior to said agreement, the "St. Francis District" can not sustain its claim to said lands under the swamp land grant, and unless the title of the government has been otherwise divested, or its right to said lands was concluded by the approval of the township surveys and the disposal of the adjacent lands, the action of the St. Francis Levee District in disposing of said lands is without warrant or authority and steps should be taken to enjoin it from disposing of the same and its purchasers should be enjoined from cutting the timber thereon.

Therefore, the condition existing at the date of the township surveys is the important fact to be ascertained in order to determine whether steps should be taken to prevent depredations on these lands. The returns of the township surveys show upon their face that what are now alleged to be unsurveyed portions of said townships were then actually bodies of water and were properly meandered as such. There is nothing in the report of the special agent, or in any of the papers submitted therewith, to impeach these returns as to the physical conditions of land and water at that time.

The opinion expressed by the secretary of the interior in his letter of November 30, 1894, herein referred to, was based upon the decision of the Supreme Court in the case of *Hardin v. Jordan*, 140 U. S. 371, assuming that there was no mistake in the surveys and that the lands contiguous to the meander line had been disposed of. In the case of *Hardin v. Jordan* the doctrine was clearly announced that the right and title of the grantee from the United States of public lands bordering on non-navigable lakes and ponds, extends to the center of the lake or pond if the government has not reserved any right or interest that might pass by the grant or done any act showing an intention to make

such reservation. The rights of riparian proprietors are controlled by the respective laws of the states, but that does not affect the question as to whether the general government is, by disposing of the public lands bordering on non-navigable lakes or ponds, properly meandered, concluded from afterwards exercising jurisdiction over said lands and from disposing of the same. Upon this question the court said:

"It has never been held that the lands under water, in front of such grants, are reserved to the United States, or that they can be afterwards granted out to other persons, to the injury of the original grantees. The attempt to make such grants is calculated to render titles uncertain, and to derogate from the value of natural boundaries, like streams and bodies of water."

While the United States does not, by the approval of the survey, and the disposal of lands contiguous to the meander line, part with its title to lands that were erroneously omitted from survey, yet, as stated in the decision of the court in *Hardin v. Jordan, supra*, there should be some extraordinary proof of mistake on the part of the surveyor in order to interfere with the passing of the land as riparian lands. It appears upon the face of the township plats of survey, and from the field notes thereof, that the lands in question were at the dates of the survey covered by bodies of water, which were properly meandered as such, and it does not appear from the report of the special agent that he has any evidence at hand to support his opinion that said lands at the time of the survey were simply covered by overflow from the Mississippi River, nor is there anything shown by your letter or by the papers submitted therewith that tends to impeach the returns of the township surveys.

More than fifty years have passed since the dates of the respective surveys of the township in which these lands are situated, and it does not appear that the correctness of those surveys was ever questioned within the time when the physical conditions of the



townships at the date of the survey could easily have been ascertained. These facts were evidently taken into consideration by your office and by the department in 1894, when the request of the St. Francis Levee District to have said lands surveyed was refused.

The action of the board of directors of the St. Francis Levee District in exercising control over said lands appears to have been prompted by the disclaimer of jurisdiction and authority over them by the government, as expressed in the letters of your office and of the department, above referred to, and such disclaimer was based upon the information furnished by the records of your office which show that the authority and jurisdiction of the government over said lands was terminated by the approval of the surveys and the sale of the lands along the meander lines. It does not appear from anything in the record whether the body of water that once covered the lands in question was navigable or not, but the result would be the same in either case. If it was a non-navigable body of water the riparian right vested by the sale of the lands along the meander lines by the government. If it was a navigable body of water the title of the bed thereof passed out of the United States upon the admission of the state to the Union, and was thereafter subject to the laws of the state. The surveyed lands in said townships adjacent to the meandered waters having been disposed of, as appears from your letter of July 10, 1902, and it not being shown that said waters were not properly meandered, and the jurisdiction and control of the government over the lands in question having thus been terminated, the action of the department of November 30, 1894, is adhered to, and no further or other action will be taken with reference to said lands.

The papers are herewith returned.

Very respectfully,

E. A. Hitchcock, Secretary.

(Rec. 77.)

Department of the Interior,  
General Land Office,

Washington, Oct. 9, 1909.

Alleged unsurveyed lands in Mississippi County,  
Arkansas.

Hon. R. B. Macon,  
Helena, Arkansas.

Sir:

I am in receipt of your letter dated September 29, 1909, transmitting one dated Blytheville, Sept. 26, 1909, addressed to you, from Mr. Herman Cross, requesting information relative to certain alleged unsurveyed lands described as being near Blytheville, and Barfield, Mississippi County, Arkansas.

In reply, I have the honor to state that the records in this office do not show that there are any unsurveyed lands situated in said county, and as your correspondent has not described the location of the particular lands he is interested in, with reference to the numbers of the township, range and section of the public surveys within which the same are situated, this office is unable to identify them upon the official plats of the survey of the townships embracing the same, to the end that their status may be determined from the records.

I will add, however, that if Mr. Cross refers to any unsurveyed lands bordering upon meandered lakes in said county, which have formed since the survey and disposition of the adjacent lands, the same are not regarded as public lands of the United States subject to survey and disposal as such, and in this connection I will invite attention to the U. S. Supreme Court decision in the case of *Hardin v. Jordan*, 140 U. S. 371.

I will also add that from correspondence on file here it is shown that certain lands within the area of Walker Lake in T. 16 N., R. 13 E., Mississippi County, Arkansas, formed the subject of a suit for a division of the lands, brought before the Supreme Court of

Arkansas in the case of *Joanna Little v. J. L. Williams, et. al.*, in which case, I am informed, the court held that the lands belonged to the owners of the adjacent lands.

The letter from Mr. Cross transmitted by you is returned herewith.

Very respectfully,

Fred Dennett,  
Commissioner.

(Rec. 76.)

It appears that in the case covered by the opinion of Secretary Hitchcock, the report of the special agent of the government stated that no lake in fact existed at the date of the opinion, that the land was apparently as high as the surrounding land, that large trees were growing on parts of the land, and that other parts were cleared and in a high state of cultivation. But the secretary held that this was not sufficient to impeach the returns of the township survey, and he very pertinently suggested:

“More than fifty years have passed since the dates of the respective surveys of the township in which these lands are situated, and it does not appear that the correctness of those surveys was ever questioned within the time when the physical condition of the township at the date of the survey could easily have been ascertained. These facts were evidently taken into consideration by your office and by the department in 1894, when the request of the St. Francis Levee District to have these lands surveyed was refused.”

Though the matter was often called to the attention of the government, and it was urged to resurvey and claim all the lands in Arkansas of the character of

the lands in controversy, the highest officials of the government, for a period beginning before 1894 and extending to 1910, held that the government had lost jurisdiction of the lands; and they steadfastly refused to reverse those opinions or to assert any interest in the lands. This was the attitude and the position of the government during the entire period of the negotiations which resulted in the compromise act.

The negotiations for the compromise lasted through a long series of years, and a list showing the debits and credits, so to speak, of lands within the terms of the swamp land grant was prepared by the agents of both governments. In the settlement of differences, the acreage was largely taken into account. As the records showed that the title to the lands in controversy had passed out of the United States, and had vested in the state under the patent from the government, and as these lands were noted on the government's inventory as state lands, it may be concluded that the acreage of these lands was placed on that side of the ledger which showed the acreage of lands already conveyed to the state. It must be borne in mind that at the date of the compromise the state still had the right to select and have patented to it swamp and overflowed lands in addition to those which it had already received. By the terms of the compromise, the state relinquished this very valuable right. But the compromise was based in part on the assumption that the state had acquired the title to these lands, and the compromise must be taken as having crystallized this

apparent status into one of fact. If the state had not disposed of these lands, it would be entitled to hold them as against the government, because the compromise act was based on the theory and assumption that the title was in the state, and the government thereby surrendered its right to go back of the record and assert title to any land which both parties were treating as belonging to the state. If the state had previously disposed of these lands, as it had done on the face of the record, the government surrendered all its right, title and interest in them on the additional ground that by the terms of the compromise act it expressly agreed to confirm, and did confirm, the title in the state's grantees.

The Supreme Court of the United States has expressly decided that both the United States and a state are conclusively bound by a compromise of differences existing between them; and that when the compromise is predicated upon an assumed status, or is based upon official records which both governments accept as being true, neither party can subsequently impeach the status or go behind the records for the purpose of showing the facts to be otherwise. This was declared to be the law in the case of an adjustment between the governor of a state and the secretary of the interior, with reference to lands which were claimed to be embraced within the swamp land grant; and, *a fortiori*, the rule would apply where a compromise made by such officers was solemnly ratified and confirmed by legislative acts of both governments. In the

opinion in the case referred to, which was delivered by Mr. Justice Brewer, the court said:

"These facts indicate very clearly an adjustment of the grant upon the basis of the resurveys. \* \* \* Under these circumstances, it being known that there were errors in the surveys, and the legislature of the state having requested action to be taken to correct these errors, and resurveys having been undertaken, and while they were being prosecuted for the purpose of correcting such errors, a list of lands, which by the original surveys appeared to be swamp and overflowed, was made out and forwarded to the governor. Upon the records of the land department the original survey of the district containing the land in controversy was at that time challenged as fraudulent. After the list containing this land had been forwarded to the governor and his request for a patent returned to the land department, a patent was issued not including this land. Subsequently the resurveys were finished and according to them this land was excluded from the grant. Thereupon a new and corrected list containing the lands, which by the resurveys were shown to be swamp and overflowed, was made out, approved by the secretary of the interior and forwarded to the governor. Upon its receipt the governor requested patents to be issued, and patents were issued conveying the lands specified therein. This clearly shows an acceptance by the officer of the state, charged under the act of Congress with the duty of so doing, of the resurveys as within the authority of the land department, and makes the adjustment of the grant upon the basis of such resurveys final and conclusive. The act of the state in accepting the new and corrected survey as the basis of adjustment is tantamount to a waiver of any claims under the prior and erroneous survey, for it can not be that a grantee accepting a patent for lands which according to a final and correct survey are shown to be within the terms of the grant can thereafter be heard to say, Notwithstanding I have taken all the

lands shown to belong to me by this correct survey, I also claim lands which by a prior and erroneous, if not fraudulent survey, appeared to pass under the grant."

*Michigan Land & Lumber Co. v. Rust*, 168 U. S., 598-9.

In the case at bar, even if we ignore the selection as confirmed by the act of March 3, 1857, the *prima facie* or record title at the date of the compromise was in the state, for the patent, when read in connection with the field notes and official plat of the survey, *purported* to convey the title to the bed of the supposed lake to the state. It is true that the state had by legislative enactment refused to accept the field notes and plat as conclusive. This action on the part of the state was the great stumbling block in the negotiations for the compromise. When these negotiations had progressed to a certain extent, the secretary of the interior refused to proceed further unless the state would change its policy and by a legislative act agree to accept the field notes and official plats as conclusive of the character of the lands. He took the position that they alone furnished that degree of certainty which was necessary as a basis for the adjustment of the differences between the two governments. The state finally yielded to the demand of the secretary, and passed an act by which it agreed to accept the field notes as final and conclusive, but with certain reservations. Act of March 17, 1885 (Acts of 1885, p. 69). A certified copy of this act was submitted to the secretary, but he

refused to accept it on account of the reservation. The state then yielded its position entirely, and subsequently passed an amendatory act which eliminated the objectional reservations. Act of March 17, 1887 (Acts of 1887, p. 101). This was acceptable to the secretary of the interior, and the negotiations proceeded to a final adjustment and compromise.

The compromise, therefore, was based on the fact that *prima facie* the title to the lands in controversy at that time was in the state. This conclusively fixed the status of that title, and the government can not go behind the face of the record for the purpose of showing that by reason of an alleged mistake in the survey, the title, while apparently in the state, was in fact in the United States, any more than the state could go behind the record for the purpose of showing that the lands which the field notes did not show were swamp and overflowed were in fact of that character, and that they should now be patented to the state. As said by the Supreme Court in the Michigan case, "the act of the state in accepting the new and corrected survey as the basis of adjustment is tantamount to a waiver of any claim under the prior and erroneous survey." So, in this case, the act of the United States in accepting the original survey as a basis of adjustment is tantamount to a waiver of any claim which the government might have asserted on the theory that the survey was erroneous.

We have been dealing with the legal construction and effect of the compromise act of April 29, 1898. A



consideration of the practical interpretation of the act by the land department of the government will fortify and emphasize the legal construction which we have placed upon it. It is well settled that the practical construction placed on an act by the officers of the government charged with its execution may be looked to by the courts for the purpose of ascertaining its true scope and meaning.

"The construction given to a statute by those charged with the execution of it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons. For, as said in *United States v. Moore*, 95 U. S. 760, 743, 'the officers concerned are usually able men and masters of the subject. Not infrequently they are the draftsmen of the laws they are afterwards called upon to interpret.'"

*Heath v. Wallace*, 138 U. S. 573, 582.

*Hastings R. Co. v. Whitney*, 132 U. S. 357, 366.

*Baker v. Sivigart*, 199 Fed. 865.

"In all cases of ambiguity, the contemporaneous construction not only of the courts but of the departments, and even of the officials whose duty it is to carry the law into effect, is universally held to be controlling."

*Schells' Executors v. Fanche*, 138 U. S. 562, 572.

To ascertain the practical construction placed on the act immediately following its passage, it may be well to consider, first, the status of the lands in controversy, as shown by the records in the land offices of the government, at the date of the compromise act; second, the results sought to be obtained by the com-

promise act; and, third, the official acts, with reference to these lands, of the land officers of the government who were charged with the duty of carrying the compromise act into execution.

First—*The status of the lands.* At the date of the compromise act, the original tract-book in the office of the register and receiver of the United States land office at Little Rock showed that the title to the identical lands in controversy had passed out of the United States and vested in the State of Arkansas. In other words, these lands were not carried as government lands in the tract-book, which was the inventory of such lands, so to speak. The entries which appeared in the tract-book at that time were as follows:

“Whole of section 22, township 12 north, range 9 east. Selected as swamp under act of Sept. 28, 1850. Approved May 11, 1852.”

“Whole of section 26, township 12 north, range 9 east. Selected as swamp under act of Sept. 28, 1850. Approved May 11, 1853.”

“Whole of section 27, township 12 north, range 9 east. Selected as swamp under act of Sept. 28, 1850. Approved May 11, 1853.”

*Tract-book 28, page 14 (Rec. 65).*

It appears, therefore, that at the date of the compromise, the whole of each section in which the area in controversy lies was noted on the government tract-book as having passed to the state. The sections were not noted as fractional, nor was the acreage given. The tract-book showed, without any qualification, that

the whole of each section, without regard to area, had been selected by the state under the swamp land act, and that such selection had been approved by the Secretary of the Interior. We have shown, in Chapter III of this brief, that the title to the whole of each section had been confirmed in the state by the act of Congress of March 3, 1857, but we are waiving that question for the sake of the present argument.

It may be urged that there was a mistake in the survey, and that for this reason the *prima facie* title to the area in controversy was subject to be divested at the suit of the United States. If such had been the case, it might be conceded for the present that the government might have asserted the mistake and claimed the land; or it might have waived the mistake, and allowed the state to keep the land. But the question of a mistake in the survey is entirely immaterial when we are considering the effect which ought to be given to a compromise agreement based on the status which was disclosed on the face of records which not only had not been challenged, but which the parties were solemnly agreeing to treat as conclusive for the purpose of arriving at a just settlement of their differences. And the point is, that during the time consumed in the negotiations for the compromise, and while the state still had the right to make new selections of swamp and overflowed lands, the government's own land book showed that the title to the very lands in controversy was in the State of Arkansas, or at least

that it had passed out of the government into the state, and then belonged to the state or to the state's grantees.

We have alluded to the fact that the purpose of the government, as declared in the swamp land act itself, was to grant to the State of Arkansas *all* the swamp and overflowed land within her boundaries. The object of the grant was to enable the state to reclaim the lands by the construction of levees and drains. The grant was not only bountiful, but, being for the benefit of the grantee, the presumption is that the state intended to accept the bounty in its fullness. The legislation of the state shows that this was true. After various acts had been passed, and after numerous lists of lands had been filed with the secretary of the interior and approved by him, the legislature, to make certain that no swamp or overflowed lands should be omitted, passed the act of December 30, 1856, which required the governor to appoint a selecting agent in each county of the state in which there were any unselected swamp or overflowed lands, whose duty it should be to select all the unreported swamp lands lying within his county, and send a list of them to the governor, verified by affidavit. The act further required the governor to forward such lists to the proper department in Washington for confirmation. Presumably this act was obeyed, for the record shows that lists of large quantities of lands were afterward transmitted to the secretary of the interior, and many of these lists were still on file in his office, awaiting his action, during the pendency of the compromise agreement. It does not

appear that the lands in controversy were included in these lists. The reason probably was, that the records in the government land office showed that these identical lands had already been selected by the state, and the selection approved by the secretary of the interior. In other words, the title to these lands was then in the state, or in its grantees.

At the date of the compromise act, therefore, the situation was that large lists of lands had been selected by the state, and the title either patented to or confirmed in it; and, pursuant to a legislatively declared purpose to select all the swamp and overflowed lands within the borders of the state, numerous lists of selections which had not been acted upon were on file in the secretary's office, and an agent was being maintained at Washington by the state for the purpose of having these lists approved and of obtaining patents to the lands described in them. In addition to this, the further fact appeared that the United States had sold to individuals large bodies of swamp lands which the state had a right to select, and that the state had also conveyed to individuals large bodies of swamp lands, the title to which had not been confirmed in or patented to it. This is a broad outline of the conditions as they existed at the date of the compromise act.

Second.—*The results sought to be obtained by the compromise act.* The act undertook to accomplish three things in particular: First, the confirmation of title in the grantees of the government, where the gov-

ernment had conveyed to individuals swamp and overflowed lands which the state still had the right to select; second, the confirmation of title in the grantees of the state, where the state had conveyed to individuals swamp and overflowed lands, the title to which had not been confirmed or patented to the state; and, third, the relinquishment by the state of the right to make any further selections of swamp and overflowed lands. The act was so worded as to give effect in express terms to these three cardinal purposes.

Third.—*The official acts, with reference to these lands, of the land officers of the government who were charged by law with the duty of carrying the compromise act into execution.* The compromise agreement was intended to settle the whole controversy between the United States and the State of Arkansas growing out of the swamp land grant. It was intended to be such a complete adjustment that the officers of each government would know the exact status of the title to every tract of swamp land in the state. To eliminate the possibility of any future misunderstanding, the United States had forced the State of Arkansas to agree to accept the field notes and official plats of the government survey as conclusive of the character of the lands involved, and to evidence such agreement by a solemn legislative enactment. Both parties, therefore, dealt on the face of the land records of the United States. The *prima facie* title to the lands in question, that is, the title based on the face of the records alone, was then in the state or in its grantee. The title to all swamp and over-

flowed lands which, *on the face of the records*, had not been approved, confirmed or patented to the state, and which had not been conveyed by the United States or by the state to individuals, remained in the United States. As to these lands, the state relinquished its inchoate title. Immediately following the passage of the compromise act, the proper officers of the government undertook to correct its land records so as to make them show the status of the title to all swamp and overflowed lands in the state as finally settled by the compromise act. The natural way to do this was to make a list of those swamp lands with respect to which the state had relinquished its inchoate title. By making this list, and entering the description of such lands on the government tract-books, the records of the land department would contain an inventory of every acre of swamp land owned by the United States in the State of Arkansas. The commissioner of the General Land Office made such a list, and sent a copy of it to the register and receiver of the United States land office at Little Rock, with directions to enter a description of the lands contained in the list on the tract-books in that office, and to send a certified copy of the list to the Commissioner of State Lands for the State of Arkansas, so that the records in the state land office might be corrected to conform to those in the federal land office. *This list did not contain a single acre of the lands in controversy.* When the listed lands had been entered on the tract-books, those books still showed, as they had shown for more than half a cen-

ture, that the "whole of section 22," the "whole of section 26," and the "whole of section 27," had been selected by the state under the swamp land grant, and that such selection had been approved by the secretary of the interior, on May 11th, 1852. They further showed, *by exclusion*, that no land in those sections had been relinquished by the state to the United States, under the operation of the compromise act. The only reference to any lands in township 12 north, range 9 east, in the list sent by the commissioner of the General land office to the register and receiver at Little Rock, or in the letter of instructions accompanying the list, is the following:

"In view of the provisions of the act of Congress above referred to, and in order to clear the records of this office and of your office of such selections, it is decided that the claim of the state under the swamp land laws of record to the tracts of land herein described, is relinquished and settled by said act, and you will so note on the records of your office, and advise the state authorities accordingly.

Description.	Section.	Township.	Range.	How disposed of by United States.
All	16	12		9 School Land.

Very Respectfully,

Binger Herman, Commissioner."

(Rec. 66.)

It thus appears that both before and after the compromise act, the records of the land department of the government showed that the title to every acre in township 12 north, range 9 east, with the exception of



section 16, which had previously been conveyed to the state as school land, was vested in the State of Arkansas under the swamp land act, and that the United States did not own the title to a single acre in that township. According to its own books, it did not own the title to any land in that township at the date of the compromise, and, according to the official construction placed by the land commissioner on the compromise act, as evidenced by the records in the land department of the government, it did not own or claim to own the title to a single acre in that township after the compromise act. In other words, according to the records made and kept by the land officers of the government, the title to all the lands in the township was, and remained, in the state or in its grantees, and the act did not operate as the relinquishment of the title to a single acre in that township from the state to the United States. This was certainly a practical construction of the act by the officers charged with its enforcement and execution. Those officers had furnished the very data on which the government had based its compromise with the state, and they were probably more familiar with the facts in the case than any one else. Under the authorities cited above, this practical construction, if not conclusive upon the courts, is of such persuasive character that it ought to control.

But we go a step further, and we claim that the practical construction referred to above not only squared with the records on which the compromise was based, and was in accord with the spirit and purpose

of the settlement, but it was absolutely true to the very letter of the compromise indenture. When the adjustment was being negotiated, it appeared that certain swamp lands had been patented to the state; other swamp lands had been selected prior to March 3, 1857, and confirmed to the state by the act of Congress of that date; other swamp lands had been selected by the state, and the selection approved, but for which no patent had been issued; and still other swamp lands had been listed as selected, but the selection had not been approved. The lands in controversy were selected in 1853, and the selection was approved by the secretary of the interior on May 11, 1853. They were then entered on the government tract-book as selected and approved. The entry was as follows: "*Whole of section 22, township 12 north, range 9 east. Selected as swamp under act of Sept. 28, 1850. Approved May 11, 1853.*" Now, whether these lands were confirmed to the state by the act of March 3, 1857, or whether they passed to the state under the patent issued on September 27, 1858, or not, they certainly were lands which had been *approved* to the state under the act of September 28, 1850, and it was expressly stipulated, by the very terms of the compromise, that they should be and remain the property of the state. The language of the agreement is as follows:

"The parties hereto agree that the land now patented, *approved*, or confirmed to the State of Arkansas under the acts of September 28, 1850, March 2, 1855, and March 3, 1857, shall constitute the full measure due the state under the said swamp land acts."

It will probably be insisted here, however, as it was in the court below, that the United States is not only not concluded by the compromise agreement from asserting title to the lands in controversy, but that by the very force of the compromise act the title actually reverted from the state to the government. In other words, conceding that the patent from the state to Waldron purported to convey these lands to him, to title to the lands, by virtue of tax forfeitures and the act of 1893, had passed to and was vested in the St. Francis Levee District, a subordinate agency of the state, at the date of the compromise act, and was relinquished by the state to the United States. And reliance will be placed on *Little v. Williams*, 231 U. S. 235. The most cursory comparison, however, will show that the facts in that case were altogether different from the facts in the case at bar, and that the court only held that the state relinquished its *inchoate* title to swamp lands, that is, its mere right to demand them, under the swamp land grant, and not that the state reconveyed to the United States any land the title to which had actually vested in the state, and either remained in the state or came back to it after a patent to individuals.

The case of *Little v. Williams* was a controversy between individuals, the defendant being the riparian claimant. The state court found as a fact that there was a mistake in the survey, and that the meander line was more than a mile from the actual shore line. The court further found, *pursuant to a stipulation of the parties*, that the United States had only conveyed to

the state the surveyed area abutting on the alleged meander line. On this state of facts, the state court held that as the government's conveyance to the state was "according to the official plats of survey of said lands returned to the general land office by the surveyor general," and the official plats showed that the land conveyed abutted on an area marked "lake," the *prima facie* effect of the patent from the United States to the state was to convey the area which the plat denominated "lake," and that this *prima facie* effect was conclusive in a controversy between individuals. In other words, though no lake in fact existed, *prima facie* the state, and likewise the state's grantees, acquired the title to the area marked "lake" on the plat, and this title was conclusive against all the world except the United States, which alone had the right to assert the mistake, and which also had the right to waive it. The decree, therefore, was in favor of the defendant.

When the case reached this court on a writ of error, the court refused to review the findings of fact because they did not present a federal question. Therefore, the court said, the pivotal question was "whether the swamp-land act of 1850 in itself operated to invest the state with the title in any such sense as to be of present avail to the plaintiff;" and the court decided this question in the negative. Accepting the findings of the state court that the land had never been selected by the state, or listed by the secretary of the interior, as swamp or overflowed land, and that it had never

been patented to the state, the court further held that the state only acquired an inchoate title under the swamp-land grant, and that this title, if in the state or in its subordinate agency, the Levee District, at the date of the compromise act, was extinguished.

In the present case the record shows that the land in controversy was selected by the state, not according to the official plats of the survey, but according to a description which was construed by the proper officers of the government as including these identical lands; and that the whole of each section in which this area lies, without any qualification as to acreage, was entered in the government tract-books as having been selected by the state, and such selection approved. The record further shows that in 1859, the state issued a patent to W. B. Waldron for fractional section 22, the north half of the north half of section 26, and fractional section 27; that Waldron's title was subsequently forfeited to the state for the non-payment of taxes; that in 1885 the lands were conveyed to the state under a decree, rendered on February 23, 1883, in an overdue tax suit, the sale to the state having been confirmed by the chancery court on July 22, 1884; that in 1903 the state granted all its lands in Mississippi county to the St. Francis Levee District; that the Levee District filed a suit in the chancery court to confirm its title to these lands, and obtained a confirmation decree on December 12, 1894; that the decree confirmed the title in the Levee Board to "all of section 22, all of section 27, and the north half ( $N\frac{1}{2}$ ) of the south half ( $S\frac{1}{2}$ ) of

section 26," and the chain of title confirmed was the patent from the state to Waldron, the tax forfeiture from Waldron to the state, and the grant from the state to the Levee District.

The *prima facie* effect of the deed from the state to Waldron of fractional sections 22, 26 and 27 was to convey to him the area in controversy.

*Little v. Williams*, 88 Ark. 50.

*Crill v. Hudson*, 71 Ark. 390.

*Towell v. Etter*, 69 Ark. 34.

*Hardin v. Shedd*, 190 U. S. 59.

It must be conceded that if the *prima facie* title had been in Waldron or in his grantees at the date of the compromise act, it would have been expressly confirmed in them by the third section of the act. The record shows that Waldron conveyed fractional sections 22 and 27 to the Memphis & St. Louis Railway Company, by warranty deed, executed June 11, 1873. It appears, therefore, that at the date of the compromise act, the title was in the Railway Company, or in its grantees, unless it had previously been divested out of the Railway Company or its predecessors by the tax forfeiture to the state. If the tax forfeiture was valid, Waldron's title went to the state, and from the state to the levee district. But this was not merely an inchoate title. The term "inchoate" is only applicable to the title to lands which, by reason of their swamp and overflowed condition, came within the scope of the

swamp land grant, but which had not been selected by the state, and confirmed in or patented to it. A title which the government land-records show had passed to the state, because the lands had been selected by the state, and either confirmed or patented to it, is a legal title. It may be only a *prima facie* title, in the sense that it might have been defeated by showing a mistake in the survey on which the record was based, if the government had not concluded itself from challenging that record, but it is none the less the legal title. It is exactly that title which, existing either in the state or in the state's grantees, the compromise act recognized and undertook to confirm and not an inchoate which it undertook to extinguish. In other words, the compromise act did not change the government records, or undertake to divest out of the state any title which the record showed to be in it. It merely undertook to relinquish a right on the part of the state with reference to lands the title to which, according to the records, was still in the United States.

It has been suggested, however, that the United States actually bought the lands in controversy from the state for a cash consideration under the compromise agreement. But this is not true. The United States neither purchased these lands under the terms of the compromise treaty, nor contemplated a purchase of them. It obtained, for a valuable consideration, a relinquishment of the state's right to make *further selections* of swamp lands, and to obtain patents for such lands. It was not the intention of the govern-

ment to purchase from the state any lands the title to which, on the face of the records in the land office, had actually vested in the state.

Moreover, the compromise between the United States and the State of Arkansas was not a haphazard affair, and if the former acquired title to the lands in controversy through that agreement, or if the state thereby relinquished its claim to the lands, the United States, on whom the burden of proving its case rests, ought to show the fact by record evidence. Lists of all the lands involved in the dispute between the government and the state were prepared by the agents of the government as data for the settlement, and the lists were published in the report which the Committee on the Public Lands submitted to the House of Representatives on the bill for an act to approve the compromise (Report No. 1634, H. R. 54th Congress, 1st Session, pp. 38-189). These lands do not appear in any of those lists. Again, the agents appointed under the act of August 4, 1894, reported the following under the head of "Unadjusted Claims:"

Hon. J. G. Carlisle, *Secretary of the Treasury*, and  
Hon. Hoke Smith, *Secretary of the Interior*.

Gentlemen: In pursuance of your respective designation or appointment of us as your representatives or agents under the act of Congress entitled "An act to authorize a compromise and settlement with the State of Arkansas," approved August 4, 1894, we have the honor herewith to submit our report.

\* \* \* \* \*

We accordingly recommend the following credits upon these facts:



1. The sum of \$156,250 being the value of 125,000 acres of land at \$1.25 per acre (Exhibit No. 3, p. 43), listed and filed by the State as inuring thereto under the act of September 28, 1850, and shown by the Government field notes of the public surveys to be swamp and overflowed within the meaning of said act.

2. The sum of \$452,000, being the value of 90,400 acres of land (Exhibit No. 4, p. 122) selected and filed as a basis of land indemnity under acts of March 2, 1855, and March 3, 1857, the claim of which is to be relinquished to the United States at \$5.00 an acre.

4. The sum of \$79,900, being the value of 63,920 acres of land (Exhibit No. 7, p. 105) claimed to be swamp by the evidences of the field notes, and disposed of by the United States subsequent to the passage of the indemnity acts (*supra*) reclaimed, at \$1.25 per acre.

5. The sum of \$150,000, the same being for 30,000 acres of indemnity school land, at \$5.00 per acre, to make up for deficiencies to the granted section (16) by reason of fractional townships and natural causes, that is, the existence of rivers, lakes, etc., within the granted section. The basis of this claim is an affidavit (Exhibit No. 9, p. 32) filed by Thomas G. Riley, agent of the state, showing the reason for the failure to file proper lists. A careful investigation of this claim leads us to believe that it is just.

Besides, the state has had only 2,345.37 acres of land of this character heretofore patented. (See also Exhibit No. 8, p. 34.)

3. The sum of \$148,450, the same being for 118,760 acres of land (Exhibit No. 4, p. 122), listed and filed upon the showing made in the field notes of the public surveys that the land therein described was swamp and overflowed, and therefore passed to the state by the act of September 28, 1850, and thereafter sold by the United States prior to March 3, 1857, thus using the same as a basis for cash indemnity under the act of March 3, 1857, at \$1.25 per acre.

13. The sum of \$348,544.06, the same being for 278,835,248 acres of swamp lands in place and as a basis of land and cash indemnity at \$1.25 per acre. This sum is made up by the allowance of about one-fourth of the amount claimed by the state through its agent, Thomas G. Riley, who has listed 506,260 acres of lands, the same not yet being filed in the swamp division. Mr. Riley states in his affidavit (see Exhibit No. 10, p. 31) that he has not yet finished the examination of the field notes of the state, and that it is his opinion, from a careful estimate of the amount and character of the lands in the state, the field notes of which he has not yet examined, that there remained, over and above said lists of 506,260 acres, other swamp lands never yet listed or applied for to the amount of 400,000 acres, including about 50,000 acres of what are known as "sunk lands," heavily timbered and not yet surveyed. This claim of 906,260 acres, not having been formally asked for by filing the lists in the proper division, we are not prepared to admit, as a whole; but, on a careful examination into the merits of the same for the purpose of an equitable adjustment of the whole swamp-land claims of the state, we recommend, as above shown, the allowance of the claim to the extent above mentioned." (Report, sup., p. 4.)

The United States ought, therefore, to be able to show by the lists referred to, or at any rate by the records which by legislative act were adopted as the basis of the compromise agreement, whether or not the lands in controversy were involved in the dispute between it and the state, and whether these lands were a part of those for which the state was allowed credit in the settlement. If the state received no credit for them, it is because they were treated as belonging to the state or its grantees, and to be held by them; and the United States is not entitled to recover them, for

the compromise was a settlement of the whole swamp land controversy, and by its express terms the state was to keep all the swamp lands which had been "patented, approved or confirmed" to it, and was to receive a credit of \$1.25 an acre for all the swamp lands with respect to which it relinquished its rights, and it nowhere appears that it was allowed a credit for the lands in suit.

Summing up the present chapter, we contend that in the adjustment of the swamp land controversy, both the United States and the State of Arkansas dealt with each other on the faith of the absolute verity of the land records of the government; that, on the face of those records, the title to the lands in suit was *prima facie* in the state, or in its grantees; that for half a century the lands had been carried on the government tract-books as having been selected by and approved to the state under the swamp land grant; that successive secretaries of the interior and successive land commissioners had declared, time and again, that there were "no unsurveyed lands in Mississippi County;" that the title to the areas marked "lake" on the official plats had passed out of the United States by virtue of the patents for the surrounding sections; that the land officers of the government had steadfastly refused to claim these lands on the ground of a mistake in the survey, though the possibility, and even probability, of a mistake had been suggested to them on numerous occasions, and they had been urged to take official action; that during the whole time when the state

might still have obtained the title to these very lands as a matter of absolute right, if the government had asserted the claim which it now makes, based on the alleged falsity of its own records, the United States treated the lands as having inured to the state, and thereby represented to the state that they belonged to it; and that, after a settlement had been negotiated on the assumption by both parties that these lands had passed to the state, the officers of the government, with perfect consistency and in the best of faith, still declared that they belonged to the state, and omitted them from the list of swamp lands the title to which, according to the judgment of the very officers who had negotiated the settlement, and who were charged by law with the duty of carrying it into execution, was relinquished by the state to the United States, by the express terms of the adjustment between them. Such being the case, the compromise agreement had the effect of crystallizing the state's *prima facie* title, based on the face of the records, into an absolute and legal title. For, under the most familiar rules of law, and in response to those immutable principles of equity which are as binding on sovereigns as on their subjects, the United States could no more go behind the record for the purpose of alleging a mistake in the survey, and of thereupon asserting title to these lands, than the state could go behind the same records for the purpose of claiming other lands, on the ground that the record falsely showed that they were high and dry, whereas in fact they were swamp and overflowed. As

pertinently said by the Supreme Court of the United States in a similar case: "The act of the state in accepting the new and corrected survey as the basis of adjustment, is tantamount to a waiver of any claims under the prior and erroneous survey." And, likewise, the acceptance by the United States of its own survey, and of its own records founded on that survey, as a basis of the adjustment of the swamp land controversy between it and the state, is tantamount to a waiver by the United States of any claim predicated upon an alleged mistake in the survey, or upon the alleged falsity of the records based thereon.

*Michigan Land & Lumber Company v. Rust*,  
168 U. S. 598.

#### V.

#### ESTOPPEL.

On the plainest principles of right and justice, the government is estopped from asserting that there was a mistake in the survey of 1841, and from claiming the title to the lands in controversy on account of such alleged mistake. We shall enumerate some of the facts which give rise to the estoppel, and then cite a few of the many cases which establish the proposition that the government, with respect to its proprietary interests, is bound by the equitable doctrine of estoppel, just like an individual.

The swamp land grant act was passed by Congress on September 28, 1850. The purpose of the grant, as

recited in the act, was to enable the State of Arkansas, by the construction of levees and drains, to reclaim the swamp and overflowed lands within her borders. To this end Congress granted to the state "the whole of those swamp and overflowed lands."

Not only did Congress intend to grant all the swamp and overflowed lands, but the legislation of the state shows that it intended to accept and acquire title to all such lands. The various acts of both sovereignties should be construed in the light of the avowed purpose of each.

The duty of consummating the swamp land grant devolved upon the secretary of the interior. Immediately after the passage of the act, that officer formulated an administrative plan for carrying it into execution. This plan was submitted to the governors of the swamp land states in the form of a circular and letter, bearing date of November 21, 1850. The circular contained a synopsis of the act, and called attention to the fact that the grant included all lands which were too wet for cultivation, even though they were dry during parts of the year. It requested the governors to make out lists of the lands thus granted to the states, designating those which had been sold or otherwise disposed of since the passage of the act.

The secretary of the interior seems to have realized that in places there would be large bodies of swamp and overflowed lands, and that it would entail useless trouble on the states to select these bodies in

the smallest subdivisions. He, therefore, directed in the circular referred to that where the character of the land justified it, the states might make their selection according to the largest division known to the governmental survey. In this respect the circular provided as follows:

“Where satisfactory evidence is produced that the whole of a township or of any particular or specific part of a township, or the whole of a tract of country bounded by specific surveys and natural boundaries, is of the character embraced by the grant, you will so report it.”

The circular submitted alternative methods of selection. The first was to adopt the field notes of the government survey as conclusive of the character of the lands; the second was to disregard the field notes entirely, and make a selection based on an actual inspection of the lands and on proof of their swamp and overflowed character by the affidavits of the inspection agents. Most of the states adopted the former method, but Arkansas, by a legislative enactment, adopted the latter.

Less than four months after the date of the swamp land act, the legislature passed a statute which provided for four commissioners to ascertain the swamp and overflowed lands granted to the state, and file an accurate list of such lands, under oath with the governor, who was directed to transmit it to the United States surveyor general.

As the law presumes that public officers do their duty, it may be assumed that the selection agents of

the state made an actual inspection of all the lands in the township in which the area in controversy was located. This presumption arises from the fact that they reported to the governor that all the lands in that township were swamp and overflowed, and the governor included such lands in the list prepared by him, and marked "A," in which township 12 north, range 9 east, was selected as a whole township. This list was filed prior to September 22, 1852, and was approved by the secretary of the interior on May 11, 1853.

The selection did not give the acreage, and did not state that it was made according to the official plats of the survey. It did not purport to be a selection of the surveyed area alone. It was, in fact, a selection of the whole township, without any reservation or restriction that would exclude a single acre in the township, whether that acre was lake land, or land in place.

It is conceded that if the area in controversy was not a lake at the date of the government survey, or even at the date of the selection of the township in which it was located, it was at least swamp and overflowed land. It was of a character, therefore, to pass under the grant. No reason can be imagined why the state should select all the other lands in this township, and not select this small area of less than 900 acres in the center of the township. If the area was not a lake, and if, as now contended by the government, its character was not dissimilar from that of the other lands in the township, this was a reason why the state



should have selected it, and certainly no reason why it should have excluded it from the selection.

If the area in controversy was swamp land at the date of the selection, it must be presumed that that fact was known to the selecting agents, because the law required them to inspect and ascertain the lands which were of a character to come within the terms of the grant. As they reported the whole township, they must have intended to include this area, and for the same reason the selection by the governor must have been intended to include it also.

In the great majority of cases the selection was of sections and fractional sections, and even of subdivisions of sections. As the governor departed from the usual course in selecting this township, there must have been some reason for it. The natural inference is that he was conforming to the directions contained in the circular of the secretary of the interior, which invited, if it did not direct, the selection of the whole township where all the land in the township was of the character contemplated by the grant.

It appears from the record that the secretary of the interior interpreted the selection of the whole township as a specific selection of every acre in the township. The government kept an inventory of its lands, in the form of a tract book, in which each section was separately entered. This book was kept in duplicate, one copy being in the land office at Washington, and the other copy being in the office of the register and receiver

at Little Rock. Among the instructions issued by the Secretary of the Interior was the following:

"After said selections are approved by the Secretary of the Interior, the register shall enter all the lands so selected in the tract book as 'granted to the state by act of September 28, 1850, being swamp and overflowed lands.'"

Pursuant to the foregoing instructions, the selection of the lands in this township was noted on the tract book in the register's office at Little Rock. The form of the entries is conclusive of the fact that the government officers construed the selection as including the area in controversy. The entries were as follows:

"Whole of section 22, township 12 north, range 9 east. Selected as swamp under act of September 28, 1850. Approved May 11, 1853."

"Whole of section 26, township 12 north, range 9 east. Selected as swamp under act of September 28, 1850. Approved May 11, 1853."

"Whole of section 27, township 12 north, range 9 east. Selected as swamp under act of September 28, 1850. Approved May 11, 1853."

The contemporaneous construction of the selection by the officers charged with the administration of the law is always persuasive, and, at this length of time, when the parties to the transaction are all dead, and the physical conditions of the lands themselves have materially changed, it ought to be conclusive.

We said at the beginning of this topic that not only did Congress intend to grant, but the state intended to select and acquire the title to all the swamp and over-

flowed lands. The intention of the state is reflected in its legislation. By an act passed in 1850, the legislature provided for four commissioners to make an accurate list of such lands, and it directed the governor to transmit this list to the surveyor general. To provide against the possibility of any lands being omitted, on December 30, 1856, the legislature passed an act which required the governor to appoint one selecting agent in each county, whose duty it should be to select all the unreported swamp lands in that county, and file a list thereof with the governor, verified by affidavit; and the governor was required to forward such list to the proper department at Washington for confirmation. The agent appointed under the latter act did not select the area in controversy, though he was charged with the duty of selecting all the unreported swamp land in the county; and the evident reason is that the government's records showed that this area had been selected as a part of the entire township, and the selection had been approved by the Secretary of the Interior.

Though the selection was filed with the proper officer prior to September 22, 1852, and was approved by the Secretary of the Interior on May 11, 1853, no patent was issued to the state until 1858. There was such complaint about the tardiness of the Secretary of the Interior in issuing patents under the swamp land act that on March 3, 1857, Congress passed an act which provided that all selections of swamp and overflowed lands theretofore made and reported to the com-

missioner of the general land office were thereby approved. The effect of this act was to confirm the title to this specific area in controversy in the state. If the selection of the whole township included the area, the title to it was of course confirmed by the act. If the selection of the whole township was in legal effect merely a selection of the sections and fractional sections which appeared on the official plat of the survey of the township, the act was still a confirmation of the title to the area in controversy, because the plat showed that the area was a lake, and the selection of the fractional sections surrounding the lake included the lake within the descriptive terms of the selection. It is immaterial whether or not a lake in fact existed, because the area was designated and described on the plat as a lake, and the rule is well settled that a description must be taken as true in construing the effect of a grant which adopts it.

After the passage of the act of March 3, 1857, the issuance of a patent became a mere ministerial act. The act directed the Secretary of the Interior to issue a patent, but the title had already vested under the selection as confirmed by the act, and the patent could not derogate from the title which had already passed, nor limit the extent of the area affected by such title. As a matter of fact, a patent was issued on September 27, 1858. On February 16, 1859, the state conveyed fractional section 27 to W. B. Waldron, and on September 13, 1859, it conveyed fractional section 22 to the same party. On June 11, 1873, Waldron conveyed both

sections to the Memphis & St. Louis Railroad Company.

The record does not show when the land was first assessed for state and county taxes, but the presumption is that taxes were levied and collected from the date of the patent to Waldron. The record does show, however, that on February 23, 1883, both sections were included in an over-due tax decree rendered in favor of the state, and were afterwards sold under that decree. In this tax proceeding, the sections were not regarded as fractional, and the description in the deed to the state under its purchase at the over-due tax sale was "All of section 22;" "All of section 27" (Rec. 7).

By an act of March 29, 1893, the state granted all of its interest in the lands to the St. Francis Levee District. The title which the state undertook to convey to the levee district was the title which the state had acquired under its purchase at the over-due tax sale. On December 12, 1894, the levee district obtained a decree in the chancery court of Mississippi County, confirming its title. The title confirmed was the one which the state had acquired under the over-due tax sale, which was the title it had conveyed to the levee district. The description in the confirmation decree was "All of section 22; all of section 27; N $\frac{1}{2}$  of S $\frac{1}{2}$  of section 26, T. 12 N. R. 9 E" (Rec. 7).

On June 6, 1898, the levee district conveyed sections 22 and 27, by warranty deed, to William Hunter. The sale to Hunter was on the basis that each section

contained 640 acres. All subsequent conveyances were on the same basis, and the purchase price was fixed on that basis. The title to both sections passed by mesne conveyances from Wm. Hunter to Jas. L. Hale, J. W. Quinn, W. L. Crenshaw and T. M. Cathey, who owned the land in 1900 (Rec. 7 and 8).

On December 10, 1892, R. E. Lee Wilson wrote to the commissioner of the general land office and requested the commissioner to advise him how he could obtain title to the lands situated in lakes and bayous in Mississippi County (Rec. 86). What Mr. Wilson had in mind, and what the land commissioner understood him to have in mind, was whether the government claimed any title to the unsurveyed areas in Mississippi County, which had been meandered in the government survey of 1841, and which appeared on the official plats of the survey as "lakes." The land commissioner, under date of January 13, 1893, replied that "Where the lands or lots bordering upon the lakes have been entered or disposed of by the government in accordance with the official plats, they are not subject to survey and disposal by the United States, for the reason that they belong to the adjacent land owners" (Rec. 10).

About the date of Mr. Wilson's letter, the question of the title to these lands became of considerable importance, and numerous communications were addressed to the land department. Immediately after its organization, the St. Francis Levee District requested the Secretary of the Interior for a survey, stating that

its purpose was to ask Congress for a grant of these lands to the levee board. The Secretary of the Interior referred the matter to the land commissioner for investigation and report, and on August 25, 1894, the land commissioner reported that these lakes had filled up since the original survey, and that around their margins, forests of large timber now stand on space formerly occupied by water; but that the title to this area had passed out of the United States, and was then in the riparian proprietors. The Secretary of the Interior, Mr. Hoke Smith, under date of November 30, 1894, advised the land commissioner as follows:

“Assuming that the lands contiguous to and surrounding the meandered lakes have long since been disposed of, it would seem, under the authorities cited, that the government has no jurisdiction over the same, and, therefore, no power to order or direct their survey. You will so advise the secretary of the levee board” (Rec. 74).

The purport of this and other opinions and rulings of the Secretary of the Interior and of the commissioner of the general land office became well known to persons who were interested in the title to these lands. The department had written directly to Mr. Wilson in effect that the United States did not claim these lands, and this letter was fortified by the letters and opinions referred to above.

Mr. Wilson testified that before he purchased these lands, he not only communicated with the land office at Washington about the title, but he had the title examined by an attorney who advised him that the

lands were owned by the riparian proprietors. Acting upon all these things, he, on August 28, 1900, purchased the lands in controversy from Hale, Quinn, Crenshaw and Cathey, who held the record title to the lands. On the face of the record the title was in Wilson's grantors. The title was in them *prima facie* against the state and the government, and it was in them conclusively against everybody else. Wilson purchased the lands on an acreage basis and paid for 640 acres in each section, and paid the then full market value for the lands (Rec. 10).

In 1902 a special investigation of these lands was made by the land department, and it reported to the Secretary of the Interior that the investigation disclosed that there had been mistakes in the government survey of 1841, and that the character of the soil, the standing timber, and other physical conditions on the ground showed that these unsurveyed areas were not lakes at the date of the original survey. In a lengthy opinion, under date of November 17, 1902, the Secretary of the Interior, Hon. E. A. Hitchcock, reviewed the report and finding of the land commissioner, and held that the facts disclosed by that report were not sufficient to impeach the integrity of a survey made more than fifty years before, and advised the commissioner that the ruling, made on November 30, 1894, that the jurisdiction and control of the government over these lands had terminated, would be adhered to (Rec. 77).

As the probabilities of a mistake in the survey had been suggested to the Secretary of the Interior, and as



the land commissioner had reported that the investigation of his special agent demonstrated a mistake in the survey, the opinion of the secretary that the department would adhere to its former ruling that the government had no interest in these areas was taken by the public as conclusively fixing the attitude of the government toward these lands. And the public believed, and had a right to believe, that it could safely act on the basis of the opinion referred to.

At the date of the purchase of these lands by Mr. Wilson, in 1900, the St. Francis Levee District was assessing sections 22 and 27 as containing 640 acres each, and after his purchase, Mr. Wilson was required to pay the levee taxes on that acreage in each section (Rec. 82). At the date of the purchase, state and county taxes were assessed against section 22 on the basis that the section contained 640 acres, and he was required to pay state and county taxes on that acreage during the time he held the land. Section 27 was assessed as fractional and containing less than 640 acres. But this, under local decisions, was an assessment of the entire area. (*Towell v. Etter*, 69 Ark. 34; *Crill v. Hudson*, 71 Ark. 390; *Ryan v. Bachelor*, 95 Ark. 375.) On April 10, 1905, Mr. Wilson conveyed both sections of land to the defendant, Lee Wilson & Company.

At the beginning of the negotiations which culminated in the Arkansas compromise of 1898, the title to the lands in controversy, on the face of the record, was in the riparian proprietors. This title was recognized both by the state and by the national government. The

compromise act in terms undertook to confirm the title of those who had purchased unconfirmed swamp lands from the state. We have argued under another topic that the effect of that act was to perfect the title in the riparian proprietors, assuming that it was subject to be defeated before that act. Without again rehearsing the facts relating to the compromise agreement, we insist that they have an important bearing on the present question of estoppel.

There is one incident connected with the compromise which ought to be mentioned. It will be recalled that Arkansas refused to accept the field notes of the government survey as determining the character of the land in making its selection under the swamp land grant. This is what caused all the confusion and led to all the friction which existed between the government and that state. When an effort was made to compromise the resulting differences, the government refused to continue negotiations unless the state would agree, by legislative enactment, to accept the field notes as conclusive of the character of the land. The state yielded to this demand, and passed the acts of March 17, 1885, and March 17, 1887. Now, the field notes showed that the area in controversy was a lake. If it was a lake, the title to it had vested in the state, as the proprietor of the fractional sections surrounding it, and this without regard to the whole township theory. It is well settled that when sovereign governments accept a status as a basis for a treaty between them, neither party to the treaty can subsequently

impeach that status, whatever the real facts may turn out to have been.

*Michigan Land & Lumber Company v. Rust*,  
168 U. S. 598.

After purchasing the lands in controversy, Mr. Wilson organized a drainage district for the purpose of reclaiming these and other lands, and a canal was constructed through these lands in 1905. The whole of section 22, 640 acres, was assessed for the construction of this ditch, the amount being \$898.56; the whole of section 27, 640 acres, was likewise assessed, the amount being \$768. In addition to paying these amounts, the defendant had the ditch constructed deeper through the lands in controversy, and from them to the outlet, to increase the drainage of these and some contiguous lands which the defendant owned, at an extra cost of \$2,000, which the defendant paid. Both of the sections in controversy were also included in another drainage district, for which they were assessed at \$8 an acre on a basis of 640 acres in each section (Rec. 10).

While the defendant was discharging these heavy public burdens on account of these lands, and paying out large sums of money for the construction of levees to protect them from the Mississippi River, and for the excavation of canals to drain the surface water, as well as paying state and county taxes on the lands, the government was steadfastly adhering to the position taken by it in 1894, as announced in the opinion of Mr.

Hoke Smith, Secretary of the Interior, under date of November 30, 1894. It may be said that the defendant paid these sums at its hazard, but a private citizen does not feel that there is any hazard in acting on the solemn assurance of one of the great departments of this government. Before purchasing these very lands Mr. Wilson had asked the land department in effect whether the government claimed any interest in them, and was assured that it did not. He purchased on the strength of this assurance, and every position taken and utterance made by the land officers of the government after the purchase up to the year 1910, was a ratification and confirmation of the former assurance to him. He was led to believe that the government did not claim these lands, and never would claim them; and, acting on this belief, he, in the best of faith, expended his time, labor and money for the purpose of reclaiming these lands and making them productive. There was no way in which he could have the question determined by the courts, if indeed it still remained a question in his mind, for he could not sue the government nor force the government to sue him. He was compelled to pay the public charges, or the lands would have been sold. And he was not required to refrain from all efforts to drain and reclaim the lands, on the mere possibility that at some future time, it might be a century away, the government would reverse its attitude and assert a claim. If it be said that the defendant was familiar with the facts, and for this reason assumed the risk, the answer is that the government

was more familiar than he, and by its express and repeated assurances had led him to believe that whatever the facts might be, the government regarded the incident as closed, and did not intend to advance any claim for the lands. The defendant not only did not know that the government would ever claim the land, and in fact was led to believe that it would not, but it could not possibly foresee what the result of a suit would be, if the government should change its front and set up a claim. Not a man is now living who was familiar with the land at the date of the original survey, and, aside from the absence or uncertainty of testimony on the subject, it was not to be supposed that the government would seek to set aside a survey which it had not only failed but had refused to challenge for three-quarters of a century. Indeed, the Secretary of the Interior had laid stress on this very phase of the case when, in 1902, he refused to order a re-survey, after the probability of a mistake in the original survey had been urged upon his attention. In his opinion the secretary said:

"More than fifty years have passed since the dates of the respective surveys of the township in which these lands are situated, and it does not appear that the correctness of those surveys was ever questioned within the time when the physical conditions of the townships at the date of the survey could easily have been ascertained. These facts were evidently taken into consideration by your office and by the department in 1894, when the request of the St. Francis Levee District to have said lands surveyed was refused" (Rec. 81).

The exceptions to the rule that there can be no estoppel where knowledge, or the means of knowledge, is equally open to both parties, were considered by the Circuit Court of Appeals for the Eighth Circuit in an analogous case, and the reasoning of the court would derive additional force from an application of it to the facts in the case at bar. The court said:

"Counsel invoke the conceded rule that there may be no estoppel of a party from asserting his titles and rights where knowledge, or the means of knowledge of them, is equally open to both parties. There are, however, two reasons why this rule is not controlling in the case in hand. In the first place, the rule has an exception that the owner of a known right or title may by his representations, acts or silence so lead another to act in the belief that the owner has waived, surrendered or abandoned his right or title that he will be estopped from asserting it to the injury of him who has changed his position in reliance upon the owner's representations, acts or silence. In the second place, no one had or could have had either knowledge, or means of knowledge, of the right of the State, if any, in the lands in controversy here before the final decrees of the courts upon them are rendered. Its right always depended upon the proof which would be adduced in any controlling litigation which might arise over it, first, of the location of the middle thread of the Missouri river and its high-water mark on its Iowa side through the oxbow in 1877 prior to the avulsion, and, second, of the existence and location of one or more islands between 1851 and 1867 between the thread of the stream and the high-water mark of that river at the time the island or islands sprang up. No man could learn, foresee or foretell what the memories of witnesses that might be found and their testimony would be regarding the existence and location of such islands and lines, years before they were called to testify, in a

river changing its bed and channel so constantly and notoriously as the Missouri. This condition of the river and the property and these facts render the doctrine of equitable estoppel peculiarly applicable and salutary in the case at bar."

*State of Iowa v. Carr*, 191 Fed. 267.

Seventy-five years have now elapsed since the survey was made, and it would not only be unjust, but extremely inequitable to permit the government to assail a survey the integrity of which it has proclaimed during all this time, and on the faith of which it has induced or at least permitted others to assume positions which would result in great loss to them if the survey is overturned.

"It was then almost thirty years after its claim to any of this land first arose, and if it had been a private party its silence, acquiescence, and laches would undoubtedly have estopped it from asserting any claim to this land against these plaintiffs. Counsel for the appellants, however, invoke the general rule that neither by the statute of limitations, nor by laches, does mere delay bar the sovereignty from maintaining its rights or from sustaining a suit to enforce them. \* \* \* They also contend that every sovereignty is exempted from the rule of equitable estoppel.

"But the great weight of authority, the stronger reasons and the settled rule upon this subject in the courts of the United States, is that, while mere delay does not, either by limitation or laches, of itself constitute a bar to suits and claims of a State or of the United States, yet, when a sovereignty submits itself to the jurisdiction of a court of equity and prays its aid, its claims and rights are judicable by every other principle and rule of equity applicable to the claims and rights of private parties under similar circumstances.

"The equitable claims of a State or of the United States appeal to the conscience of a chancellor with the same, but with no greater or less force than would those of an individual under like circumstances."

*State of Iowa v. Carr*, 191 Fed. 257-265.

When the United States comes into court to enforce its proprietary rights, it comes as any other suitor; and the courts determine the rights of citizens in controversies with the government according to the ordinary rules which prevail in actions between private individuals.

*State of Iowa v. Carr*, 191 Fed. 257.

*Hemmer v. United States*, 204 Fed. 898.

*Rhode Island v. Massachusetts*, 12 Peters 657, 737.

*Brent v. Bank*, 10 Peters 569, 614.

*Mitchell v. United States*, 9 Peters, 711.

*United States v. Castillero*, 2 Black 17, 320.

"But when it sues in equity as a private suitor on a cause of action relating to its proprietary interests, it is held to be affected by those equities which are recognized as fundamental in controversies between private parties."

*United States v. Chandler-Dunbar Water Power Co.*, 152 Fed. 25.

*United States v. Detroit Lumber Company*, 200 U. S. 321.

Where a preemptor had proven his claim, paid his money, and received a certificate of entry, it was held



that the commissioners could not set aside the entry on the ground that by a new survey, one of the lines was changed so that the preemptor's residence was outside of the boundary of the tract as originally surveyed. The court said:

"It is to be remembered that the original survey of Bennett was the survey of the government; that it was made in 1833; that the maps, plats, certificates, and field notes were all filed in the proper office, and the survey approved, and that for eleven years the government had acted upon and recognized it as valid and correct, and above all had sold the land to Lindsey by this its own survey, received the purchase money and given him a patent certificate, five years before any suggestion was made of this error. The money thus received by the government has never been returned, nor do we think it would vary the rights of the parties if it had been actually tendered to him or his heirs. We are of the opinion, under these circumstances, that so far as the location of the lines of that quarter section affect the question of the precise locality of Lindsey's residence, as bearing on his right to enter that fraction as a pre-emption, the government was bound by the original survey of Bennett."

*Lindsey v. Hawes*, 2 Black, 554.

See, also, *Brannon v. Wirth*. 17 Wallace, 32-42.

"When the contract was made with the claimant, the vessel was in Mexican waters, and not subject to the jurisdiction of the United States. The claimant was applied to for its use. No question was made about its title, and it is not suggested that he was guilty of any concealment or suppression of the truth in regard to it. Under these circumstances, it would be bad on the part of the government, after getting possession of the steamer, and getting it within its jurisdiction, under pretense of hiring it of the claimant, to set up

that he had no title to it. This is so obviously in accordance with the justice of the case, that we deem it unnecessary to make any further observation on the subject."

*Clark v. United States*, 95 U. S. 539-544.

See *Hough v. Buchanan*, 27 Fed. 328.

"Resolute good faith should characterize the conduct of states in their dealings with individuals, and there is no reason in morals or law that will exempt them from the doctrine of estoppel."

*State of Indiana v. Milk*, 11 Fed. 389.

See, also *United States v. Dawles Military Road Co.*, 41 Fed. 493.

We have called attention to the fact that the government would not enter into a compromise with the state until the state, by legislative enactment, agreed to accept the field notes of the government survey as conclusive evidence of the character of the lands for the purpose of the adjustment. The field notes showed that the land in controversy was a lake. The records, therefore, in connection with the field notes and the official plats, showed that the title to this land had passed out of the government into the state, and from the state to private individuals. Both parties to the compromise accepted this status as disclosed by the records as the basis of their treaty. They not only accepted this status as the basis for determining the rights of the respective sovereignties, but each, by appropriate legislation, expressly recognized and confirmed that status in favor of individuals who had dealt

with the lands on the faith of it. Under such circumstances, the government is estopped from overturning the *prima facie* effect of its own records, and from overthrowing the status which it accepted, and required the state to accept, as the basis of the Arkansas compromise.

The government can not go behind the basis of the compromise act any more than the state can. Suppose the state should claim that it was forced to accept the field notes of the government survey as conclusive evidence of the character of the lands for the purpose of making the settlement with the United States, and that the field notes were fraudulent and untrue in that they showed large bodies of land to be high and dry, whereas such lands were in fact swamp and overflowed. Would it be seriously contended by the government that the state could go back of its compromise agreement with the government, and, by impugning the integrity of the survey, assert a right to select such lands, and have them patented to it under the swamp land grant? And yet, this in effect is exactly what the government is seeking to do in the present case.

In the administration of the swamp land grant numerous differences arose between the government and the state of Michigan, but these differences were finally adjusted by the officers of the respective governments, the adjustment being largely upon the basis of corrected surveys. Afterward, the state undertook to go behind the adjustment, and to claim certain lands on the basis of the original survey. In holding that the

state was estopped under the circumstances, the Circuit Court of Appeals for the Sixth Circuit said:

"It is a rule devised for the protection of the public that the state shall not be held responsible for the acts of its agent when done in excess of his powers. Assuming, for the moment, that there was an excess of power by the officers of the state, what is the application of the above-stated rule to the circumstances as we now find them? It is a fit rule to apply to a transgression which the state has not condoned; but it has no application to a case in which no question of morals is involved, but where a course of action has been pursued with the knowledge and acquiescence of the state in the management and disposition of its property interests for so long a time that the public have been led to reasonably believe that they may act upon the assumption that what has been done with the sanction of the state was validly accomplished. To apply the rule as the state asks us to apply it here would be to pervert it to an agency for mischief and wrong. The public have supposed, and had a right to suppose, that they could deal with the lands in the state upon the status given them by the action of the public officials of the state and of the United States, without dissent from either government. In a justly inspired confidence in the integrity and validity of this public action, several hundred thousand acres of land in the state have been bought from the United States by citizens who are *bona fide* purchasers, and whose titles are mere nullities if this contention of the state can be maintained. It was for the public interest that the status of the lands should be settled, and that they should not remain as stumbling blocks in the progress of the improvement of the country. The state can not be permitted to say that it has slept during all this long period, and abandoned its sovereign duties to its citizens, as well as its reciprocal moral obligations to the government which had made to it so magnificent a gift. The state is not to be regarded as a mere machine

incapable of intelligence or conscience. And, while it is necessary and right to restrain or annul the unauthorized acts of its agents by which its interests might be impaired, yet there must come a time, after long-continued acquiescence in public action, the state itself shall be precluded from despoiling others by the assertion of its original rights."

*State of Michigan v. Railroad Company*, 69  
Fed. 117-121.

Immediately following the passage of the compromise act of 1898, the commissioner of the general land office forwarded to the register of the land office at Little Rock a list of lands as to which the government claimed that the state had relinquished its inchoate right by the terms of the compromise act. This list did not contain the lands in controversy. A certified copy of this list was sent by the department to the state land office, so that the books of the state might be corrected to correspond with the tract book of the government. This was a practical interpretation of the compromise act, an interpretation which was acted on by the public for eleven years before the government reversed its position and asserted a claim to these lands. Upon every principle of fairness, justice and equity, it should be held that the government is estopped from claiming the title to these particular lands.

## VI.

### Innocent Purchaser.

The defendant and those under whom it claims are purchasers for value without notice of the government's claim of title, and should be protected as innocent purchasers. They acted on the faith of the governmental survey of 1841, a survey which remained unchallenged for seventy years. Even if we eliminate the whole township theory and treat the selection and patent as conveying in terms only the fractional sections abutting on the area in controversy, yet the title, on the face of the record alone, in connection with the field notes and official plats of the survey, was *prima facie* in the riparian proprietors. The state treated the lands as belonging to such proprietors, and assessed them for taxes on that basis. The St. Francis Levee District, a political subdivision of the state, also treated them as private property and collected levee taxes on the land on the basis of 640 acres to the section. Seven years before he purchased, Mr. Wilson inquired from the land department in effect whether the government claimed any interest in the so-called lake-lands of Mississippi County, and was advised that it did not. After this, various opinions were issued by the land commissioner and by the secretaries of the interior to the effect that the government had parted with its title and had lost jurisdiction over these lands. Wilson had an abstract of the title examined by an attorney, and was advised that the title was in the parties from whom he

contemplated purchasing. The uncontradicted proof is that he purchased sections 22 and 27 on the basis that each contained 640 acres, and paid the full market value for that acreage at that time. The proof fully sustains the plea that the defendant is a purchaser for value without notice, and it should be protected even though the court should find that there was a mistake in the survey, and that such mistake would be available against any one who did not stand in the position of a *bona fide* purchaser for value without notice.

In discussing the rules which should govern the decision of a case like the one at bar, Mr. Justice Brewer announced the following propositions:

“First. The respect due to a patent; the presumption that all the preceding steps required by law had been observed before it is issued; the immense importance and necessity of the stability of titles depending upon these official instruments demand that suits to set aside or annul them should be sustained only when the allegations on which this is attempted are clearly stated and fully sustained by proof.”

“Second. The government is subject to the same rules respecting the burden of proof, the quantity and character of evidence, and the presumption of law and fact, that attend the prosecution of a like action by an individual.

“Third. It is a good defense to an action to set aside a patent that the title has passed to a *bona fide* purchaser for value, without notice. And, generally speaking, equity will not simply consider the question whether the title has been fraudulently obtained from the government, but also will protect the rights and interests of innocent parties.”

*United States v. Stinson*, 197 U. S. 200-4.

"It is fully established by the evidence that there were in fact no actual settlements and improvements on any of the lands as falsely set out in the affidavits in support of the pre-emption claims and in the certificate issued thereon. This undoubtedly constitutes a fraud upon the United States sufficient in equity as against the parties perpetrating it or those claiming under them with notice of it, to justify the cancellation of the patent issued to them. But it is not such a fraud as prevents the passing of the legal title by the patent. It follows that to a bill in equity to cancel the patent upon these grounds alone, the defense of a *bona fide* purchaser for value without notice is perfect."

*Colorado Coal Co. v. United States*, 123 U. S. 313.

"It is a mistake to suppose that for the determination of equities and equitable rights we must look only to the statutes of Congress. The principles of equity exist independently of and anterior to all Congressional legislation, and the statutes are either annunciations of those principles or limitations upon their application in particular cases. In passing upon transactions between the Government and its vendees we must bear in mind the general principles of equity and determine rights upon those principles except as they are limited by special statutory provisions. And clearly upon those principles a party purchasing an equitable right is entitled to be protected in his purchase so far as it can be done without trespassing upon the rights of other parties."

*United States v. Detroit Lumber Company*, 200 U. S. 321-39.

In discussing the essentials of a *bona fide* purchase, the court in the case just cited said:

"The rule of law in respect to purchases of land or timber is the same as that which obtains in other



commercial transactions, and such a rule as is claimed by counsel would shake the foundations of commercial business. No one is bound to assume that the party with whom he deals is a wrongdoer, and if he presents property, the title to which is apparently valid, and there are no circumstances disclosed which cast suspicion upon the title, he may rightfully deal with him, and, paying full value for the same, acquire the rights of a purchaser in good faith."

*United States v. Detroit Lumber Company,*  
*supra.*

The *prima facie* title according to the official plat was in the defendant's grantors. If the plat and field notes were correct, the title of its grantors was perfect. There was nothing to put the defendant on notice of any defect. The government survey on which the plat was based was completed more than fifty-nine years before Mr. Wilson purchased, and sixty-four years before he conveyed to the defendant. Both the state and the government treated the title as vested in the parties from whom the defendant purchased, and the government had given repeated assurances of the most positive character that it not only regarded the survey as correct, but that a special investigation made by the land department had failed to disclose any fact that would tend to impeach the integrity of the survey.

It will probably be contended that the title never passed from the United States to the defendant's grantors, and that, therefore, there is no basis for an application of the doctrine of innocent purchaser. But we call attention to the fact that the doctrine is never

invoked, or at least that there is no occasion for invoking it, except where one purchases land from another who apparently owns the title to it, but who is in fact without title. This is the exact situation in the case at bar. By the act of September 28, 1850, the United States granted the swamp and overflowed lands to the State of Arkansas. Under an express authorization from the Secretary of the Interior, the State selected the entire township in which these lands are located. The government officials interpreted this selection as including the identical lands in controversy, and the register of the federal land office at Little Rock, acting under instructions from his superior officer at Washington, noted on the tract book that the whole of section 22, the whole of section 26, and the whole of section 27, had been selected by the state, and that such selection had been approved by the Secretary of the Interior. Subsequently, the United States issued a patent to the state, which conveyed the whole of the township, "according to the official plats of the survey." As the official plats showed that a lake existed within sections 22, 26 and 27, the conveyance of fractional sections 22, 26 and 27 included the "plat lake," when construed in connection with the plat, as truly as if the plat lake had been described in specific terms. It thus appears that both under the selection as confirmed by the act of March 3, 1857, and under the patent, even if the patent be construed as describing the fractional sections only, the title *prima facie* passed from the

United States to the state, so as to lay the predicate for an application of the doctrine of innocent purchaser.

*Little v. Williams*, 88 Ark. 37.

*Kean v. Calumet Canal Company*, 190 U. S. 459.

When the state conveyed fractional sections 22, 26 and 27 to W. B. Waldron in 1859, the patent purported on the face of the record to include the bed of what the plat showed to be a lake within those sections.

*Little v. Williams, supra.*

*Crill v. Hudson*, 71 Ark. 390.

So true is it that the title was apparently in Waldron that in a suit between private parties the court would be bound to hold that the title was conclusively in Waldron, for an individual would not be permitted to assail the integrity of the public survey.

*Little v. Williams, supra.*

*Cragin v. Powell*, 128 U. S. 691.

*Whittaker v. McBride*, 197 U. S. 510.

The very genius of the present suit is a demonstration of the fact that the title on the face of the record had apparently passed to Waldron. Suppose nothing appeared in this record except the survey of 1841, and that the correctness and validity of that survey had not been questioned, does any one suppose, or would any one contend, that the United States would be entitled to recover these lands? Certainly not. The court would be compelled to hold that on the face of the rec-

ord the title was in the defendant. And it is only by showing that there was a mistake in the survey, and that the lake which appeared on the official plats of the survey did not in fact exist, that the government lays the foundation for claiming the land in this suit.

After the issuance of the patent to Waldron in 1859, the lands were forfeited to the state for the non-payment of taxes. The forfeiture took place on the 23d of February, 1883, and the lands were sold to the state under an overdue tax decree. The decree described the lands as "All of section 22; NE $\frac{1}{4}$  of section 27; NW $\frac{1}{4}$  of 27; SW $\frac{1}{4}$  of section 27; and SW $\frac{1}{4}$  of 27, T. 12 N., R. 9 E" (Rec. 8). The sections were condemned and sold to the state as full sections, and not as fractional. In 1893, the state granted all the lands owned by it in the St. Francis basin to the St. Francis Levee Board. The Levee Board brought an action in the chancery court of Mississippi county to confirm its title to the identical lands in controversy, and obtained a confirmation decree on December 12, 1894. The decree confirmed the title in the Levee Board to "all of section 22; all of section 27; N $\frac{1}{2}$  of S $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E" (Rec. 7). The title then passed by mesne conveyances from the Levee Board to the defendant. Each of these conveyances described the land as all of sections 22, 26 and 27, giving the acreage as 640 acres to each section (Rec. 7 and 8).

On the face of the record, therefore, the title had apparently passed out of the United States and vested in the defendant's grantors, so as to constitute a foun-

dation for the plea of *bona fide* purchaser. It was to impeach and destroy this record, and thereby to establish and quiet the title of the United States, that the present suit was instituted.

But, it may be claimed by the appellee that Mr. Wilson's own testimony shows that before he purchased the land he knew that the title was still in the government. His testimony will not bear that construction. He said that he knew that the unsurveyed lands had not been patented as unsurveyed lands. This was strictly true. They were never described in any patent as unsurveyed lands.

Mr. Wilson testified that he purchased the lands on an acreage basis and bought and paid for 640 acres in each section; that this was the full market value of the land at the time he purchased; that, before buying, he had the title examined by an attorney, and was advised that the area in controversy belonged to the riparian owners, or, in other words, that the title was in the parties from whom he purchased; and that, some time before he purchased, he wrote to the General Land Office at Washington and asked how he could acquire title to the unsurveyed lands in Mississippi county, and received a letter in reply in which he was advised that such lands "belonged to the adjacent land owners." (Rec. 10). The lands had always been carried on the government tract book as belonging to the state. Numerous land commissioners and secretaries of the interior had given opinions that the government had no claim or title to the lands. Secretary Hitchcock

had declared, in his opinion, that such a great length of time had transpired since the original survey that the government would not attack the survey, even though representations had been made that the survey was incorrect. After the Arkansas compromise in 1898, the government officers made a list of the lands the claim to which was relinquished by the state by the terms of the compromise agreement. These lands were not on that list. They were still carried on the government tract book as lands which had passed to the state. This was the condition when Mr. Wilson purchased. If Mr. Wilson knew that the title was still in the government, he knew more than anybody else in the world, and he knew this in spite of every record in the government land offices, and in spite of the official protestations of the highest land officers of the government. Nothing short of contortion could twist his testimony into a statement that when he purchased he knew that the title was in the United States; and nothing short of insanity would have induced him to pay the full market value for the land to an individual, when he knew that they belonged to the United States.

## VII.

### Limitations.

The defendant has pleaded the five years' statute of limitations of March 31, 1891, c. 561, sec. 8, which provides that "suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act."

We have shown that the defendant's title does not rest on a patent from the United States to the State of Arkansas, but is founded upon a selection of the entire township which includes the land in controversy, and the confirmation of the state's title based on such selection by the act of March 3, 1857. If the title based on the selection is upheld, there will be no occasion to consider the statute of limitations.

If, however, we treat the title as based exclusively on the patent from the United States to the state, then the present suit is barred by the five years' statute of limitations referred to, whether the patent be construed as a grant of the township as a whole, including the entire area enclosed by the exterior boundary lines of the township, or whether it be construed merely as a conveyance of the sections and fractional sections composing the township.

If the descriptive terms "the whole township" be construed to embrace the entire area within the exterior boundary lines of the township, the present suit is barred by the statute of limitations applicable to suits to vacate and annul any patent issued before the

31st day of March, 1891, though the proceeding is in form a suit to remove cloud from title. The land in controversy is a part of the area of the township. The patent in terms conveyed the whole township. If the present suit is successful, its effect will be to carve out of the conveyance about 800 acres of land which is situated approximately in the center of the township. Though in form a suit to remove cloud, the purpose of the suit is to except a designated area from the descriptive terms of the patent, and this is *pro tanto* a vacation or annulment of the patent.

In *United States v. Chandler-Dunbar Company*, the United States filed a bill in equity to remove a cloud from its alleged title to two islands in the Sault Ste. Marie. The islands are in the rapids of the river on the American side of the Canada boundary line, and near a strip of shore lying between the rapids and the United States ship canal. The defendant claimed this strip and the islands under a patent from the United States which described the land as bounded by the St. Mary river on the east, north and west. The United States contended that the patent was void because the land had been reserved for public purposes, and that even if it was valid, the islands did not pass. The defendant pleaded the statute of limitations of March 3, 1891. In holding that the suit was barred whether the land was reserved or not, and whether the patent was void or merely voidable, the court said:

"In form the statute only bars suits to annul the patent. But statute of limitations with regard to land,



at least, which can not escape from the jurisdiction, generally are held to affect the right, even if in terms only directed against the remedy. *Leffingwell v. Warren*, 2 Black, 599, 605; *Sharon v. Tucker*, 144 U. S. 533; *Davis v. Mills*, 194 U. S. 451, 457. This statute must be taken to mean that the patent is to be held good, and is to have the same effect against the United States that it would have had if it had been valid in the first place. See, *United States v. Winona & St. Peter Railroad Company*, 165 U. S. 463-475."

*United States v. Chandler-Dunbar Company*,  
209 U. S. 447.

If we treat the patent as merely conveying the sections and fractional sections composing the township, the suit is, nevertheless, barred by the statute of limitations referred to. The *prima facie* effect of the patent was to convey the land in controversy, as well as the sections and fractional sections of the township. This is the *prima facie* effect of the patent against the United States, and it is the conclusive effect of the patent against everybody else. If the description in the patent had been "the sections and fractional sections composing the township, and the unsurveyed area which is designated in the field notes and plats of the official survey as a lake," its legal effect would not have been different from that of the descriptive terms actually used in the patent. The present suit, therefore, which seeks to exclude an area which was *prima facie* included within the descriptive terms of the patent, is a suit, *quoad* that area, to vacate or annul the patent.

*United States v. Chandler-Dunbar Co.*, 209  
U. S. 447.

It may be contended that the suit is not one to vacate or annul the patent, even *pro tanto* the land in controversy, but merely a suit to ascertain what lands actually passed under the patent, the question to be determined by the nature of the meander line, as being a true meander or in fact a boundary line. Whatever force this contention might have in a suit based on a patent from the United States to an individual, a question which it is not necessary for us to consider, it has no application to a suit which turns on the construction of a patent from the United States to a state under the swamp land grant. In other words, there is a distinction between the right of the United States to correct a mistake in its survey for the purpose of limiting the title to the meander line, in a grant to an individual, and its right to correct an alleged mistake in its survey for a like purpose, in a patent to the state under the swamp land act. In the case of a grant by the United States to an individual of a fractional section shown by the official plat to border on a non-navigable inland lake, the *prima facie* effect of the patent, in connection with the official plat, vests the title to the center of the lake in the grantee, but when it is made to appear that no lake in fact existed, or that there was a considerable area of land in place between the meander line and the margin of the lake, such fact overcomes the *prima facie* effect of the patent, and demonstrates that the meander was in fact a boundary line, and that it constituted the limit of the grant. Whether the statute of limitations would apply in such a case need not

be considered, though the *Chandler-Dunbar* case seems to hold that it would.

The situation is altogether different in the case of a patent to the state of a fractional section of swamp and overflowed lands shown by the official plat to abut on the margin of an inland lake. The *prima facie* effect of the patent is the same in this case as in the other, but the legal effect is altogether different, because the issuance of the patent to the state under the swamp land grant is a determination by the Secretary of the Interior that the part of the bed of what appeared on the official plat to be a lake is swamp and overflowed lands within the purview of the swamp land grant. The *prima facie* effect of the patent was to convey the lake bed as well as the upland. If the area which appeared on the official plat as a lake was not intended to pass under the patent—if the Secretary of the Interior did not find that this area was swamp land within the purview of the act—it was his duty to exclude it from the patent by proper qualifying words in the description. Its inclusion in the *prima facie* effect of the patent, or its inclusion within the descriptive terms of the patent as construed by the law, was just as truly an identification of the particular area as possessing the character contemplated by the act of April 28, 1850, as the inclusion of the sections and fractional sections was an identification of them as swamp and overflowed lands. As the unsurveyed area was *prima facie* included within the descriptive terms of the patent, the issuance of the patent constituted an

identification of that area by the Secretary of the Interior, and his decision of the fact that this area was of a character to come within the terms of the grant is conclusive both upon the United States and the State of Arkansas. He may have made a mistake in his judgment, or he may have been misled by a mistake in the field notes or in the plat of the official survey. Instead of being swamp and overflowed land, the area enclosed within the meander line might have been a lake, a stream, a marsh, a plain or a mountain. Its real character is wholly immaterial. Being embraced within the descriptive terms of the patent, when read in connection with the official plat of the survey, it is identified as coming within the terms of the grant, and such identification can not be assailed by the United States any more than it could be by a private individual.

*Wright v. Roseberry*, 121 U. S. 428.

*French v. Ryan*, 93 U. S. 169.

*Hendry v. Willis*, 33 Ark. 833.

*Ray v. Railroad Company*, 69 Minn. 547; S. C. 173 U. S. 578.

*Heath v. Wallace*, 138 U. S. 537.

*Michigan Land Co. v. Rust*, 168 U. S. 589.

*Securities Land Co. v. Burns*, 193 U. S. 167-187.

*Kean v. Calumet Co.*, 190 U. S. 452.

Under the common law which prevails in Arkansas, the selection of a fractional section which appeared

on the official plat to border on a lake, was a selection of the submerged land between the shore line and the center of the lake, as well as a selection of the surveyed land. The same principle would apply to a patent to the fractional section. And the principle is true, though no lake in fact existed. After all, it is merely a question of the purport of the description based upon the official plat.

“It was noted that the conveyance was by reference to the official plat. The plat of the Illinois portion, unlike that of the part in Indiana, described the lake as a ‘navigable lake.’ It is true that this was a mistake, but it might be urged that the description must be taken to have the same effect as if it were true when we are determining the effect of the conveyance adopting it. It would seem that if a conveyance of land bounded by navigable water would not pass land below the water line, a conveyance purporting to bound the land by navigable water does not purport to pass land below the line.”

*Hardin v. Shedd*, 190 U. S. 520.

The very distinction which we are contending for has been recognized by the Supreme Court of the United States, and our position with reference to it has been fully upheld. The following excerpt will make the matter entirely plain:

“It is said that the land under water was not embraced in the survey of 1834. It would seem from the plat of the field notes that the sections and dividing lines were clearly marked off and posts set. The case is similar to *Kean v. Roby*, 145 Ind. 221, where the survey was pronounced sufficient. No difficulty was felt on the ground that the survey did not cover the sub-

merged land in *Hardin v. Jordan*, 140 U. S. 371. But, furthermore, the land was selected as 'swamp and overflowed lands' by the state. It not appearing otherwise, the selection must be presumed to have included the land overflowed, and if so, it was confirmed to the state by the act of March 3, 1857, c. 117, 11 Stat. 251; Rev. Stat., section 2484. The confirmation encounters none of the difficulties of cases like *Stoneroad v. Stoneroad*, 158 U. S. 240. The land surrounding the water, at least, was surveyed, so that the identification of the submerged portion was absolute. We are of the opinion that the State of Indiana got a title to the whole land in dispute."

*Kean v. Calumet*, 190 U. S. 460.

It appears, therefore, that the area in controversy had been identified by the Secretary of the Interior as swamp and overflowed land within the purview of the act of September 28, 1850, and that it was included, at least *prima facie*, within the descriptive terms of a swamp land patent from the United States to the State of Arkansas. Such being the case, the United States can not assail the decision of the Secretary of the Interior; and a suit brought for that purpose, and for the further purpose of carving the area out of the *prima facie* effect of the patent, is, in legal contemplation, a suit to vacate and annul the patent to that extent, and it is barred by the five years' statute of limitations.

*United States v. Winona Railroad*, 165 U. S. 474.

There is another aspect in which the present suit is one to vacate or annul the patent, at least to the extent of the lands in controversy. The patent was

"according to the official plat of the survey." By reference, therefore, the plat was a part of the patent, as fully as if it had been incorporated in the patent itself. Now, the plat described the area in suit as a lake, and, by reason of such representation, the patent purported to convey it. But the government has undertaken to show that the plat and the field notes on which it was based were incorrect, in that the area marked lake was really land in place; and it seeks to recover the area on the ground that the patent, by reason of such mistake, did not include it. In this view, the suit in effect is one to vacate and annul the plat, which is not only a part of the patent, but the most material part of it for the purposes of the present controversy. The suit, therefore, comes squarely within the purview of the statute of limitations.

In this connection, attention may be called to the fact that there is a vast difference, so far as the record title is concerned, between a patent to a tract of land which in fact borders on a lake, though the existence of the lake is not indicated in the descriptive terms of the patent, and a patent to a tract of land which does not border on a lake, but which is represented on a plat as abutting on a lake, and the conveyance is made "according to the plat." Take, for instance, a grant of black-acre. Now, a patent to black-acre, with no other descriptive term, would not purport on its face to convey the bed of a lake on which black-acre abutted. Extrinsic evidence, therefore, of the existence of the lake, the title to which passed as an incident to the

grant of the littoral shore, would, in that case, enlarge the grant beyond the apparent scope and purport of the patent, by showing that it included land not described in the patent. On the other hand, a patent to black-acre, according to a plat which represented it as abutting on a lake, would purport on the face of the patent itself to convey the area so represented to be a lake; and extrinsic evidence of the non-existence of the lake would, in that case, correspondingly narrow the grant, by excluding from the operative force of the patent an area that was definitely included in the apparent scope of its descriptive terms. In the first case, a suit by the grantor to recover the area claimed to be a lake, on the ground that no lake existed, or that, if a lake did exist, there was a strip of land between the lake and black-acre which excluded riparian ownership, would not come within a statute of limitations affecting suits to vacate and annul patents, for the suit would not involve the integrity of the patent itself, but only the question whether or not, according to extrinsic facts, the incident of riparian title attached to the grant. In the second case, a suit by the grantor to recover the area which the plat represented to be a lake, on the ground that there was a mistake in the plat, and that the area marked lake was really land in place, the title to which, by reason of the mistake, did not pass by the grant, would fall within the purview of such a statute of limitations, for its object in effect would be the annulment of the patent *pro tanto*, by excluding from its operation a definite area which the patent purported on its face to convey.



We believe it was Lord Mansfield who said that sometimes the statute of limitations is an honest plea. It is not only honest, but it is extremely just and equitable in the present suit. Congress recognized the injustice of permitting the United States to prosecute suits to overturn land titles after the government had recognized their validity for such a length of time as to induce others to act on the faith of such validity. The present case is not one of mere quiescence, or even of acquiescence alone. It is a case in which for more than half a century the land officers of the United States affirmatively proclaimed that the government had no interest in these lands, and that they belonged to the riparian proprietors. There is every reason for giving effect to the statute of limitations, and no reason for indulging in any refinement of construction for the purpose of evading the statutory bar.

“At the time of such selection and certification, the only parties in interest were the United States and the State. Concede the fact that, through inadvertence, mistake or (of which there is no evidence) wrong on the part of the officials, this land was improperly selected and certified, yet the United States for thirteen years never questioned in any way the rightfulness of the selection and certification, or challenged the title which was apparently confirmed thereby to the state. It may be conceded that no error or wrong on the part of the officers of the land department concludes the United States, and that they might, whenever they saw fit by proper proceedings set aside the title thus apparently conveyed. But they took no steps. They acquiesced in the transaction. The land was land which the United States had power to convey. Congress could by special act or otherwise have transferred this

specific tract to the state. The records of the transaction were public and open. It was no secret conveyance by which title was wrongfully conveyed to the state, but a matter of record of which everybody, both governments included, were chargeable with notice. Not only was the title thus apparently transferred unchallenged, but also the state dealt with it as its own property, and conveyed it in satisfaction of one of its contracts.

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"And when such conveyance is of long standing, and the transaction has been acquiesced in for many years by the government, and parties relying upon the title apparently conveyed have invested large sums of money, then an attempt by such an intruder to set aside all these transactions and to appropriate the property to himself, is offensive to every sense of right and justice, and equity will lend no helping hand to such effort."

*Dewesse v. Reinhard*, 165 U. S. 390-391-392.

It was contended in the district court, and the court sustained the contention, that if it should be conceded that the present case fell within the terms of the statute of limitations of March 31, 1891, it would nevertheless be controlled by the rule in equity that in cases of concealed fraud the statute does not begin to run until the fraud is discovered, or, by the exercise of ordinary care, could have been discovered.

We do not deny the existence of the equitable rule, but it has no application to the case at bar.

In the first place, the rule only applies to the party who has himself been guilty of the fraud, and of the concealment of it, and who himself pleads the statute as a bar to the action.

The theory of the rule is that to permit one to plead the statute of limitations in bar of an action to cancel a patent on the ground that it is procured by fraud, when it appears that a concealment of the facts until after the statutory period had expired was accomplished by an additional fraud on the part of the patentee, would be to permit him to take advantage of his own wrong, which, as said by this court in the *Exploration Company* case, "is not to be thought of in a court of equity."

The rule is well summed up by Mr. Justice Miller as follows:

"To hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud a means by which it is made successful and secure."

*Bailey v. Glover*, 21 Wallace 342.

The fact that the rule only applies to the perpetrator of the fraud is further illustrated by the decision in *Lynn & Lane Timber Co. v. United States*, 196 Fed. 593. The perpetrator of the fraud in that case was a corporation, and an effort was made to avoid the force of the rule by showing that some of the stock of the corporation had passed into the hands of innocent purchasers. The court conceded that the rule was applicable only to the wrong-doer, but said: "It has never been held that a corporation which is not itself an innocent purchaser of property, can defend a suit to re-

cover the property on the ground that its stockholders subscribed to or purchased their stock in good faith, and in ignorance of the fraud. The contrary has been held by this court in *Wilson Coal Company v. United States*, 188 Fed. 545."

It is not pretended in the present case that the defendant was connected in any way with the fraud in the survey, if any fraud existed. Nor is it claimed that the defendant or those under whom it claims had any knowledge of the fraud, if any existed. It is not even suggested that it had anything to do with the concealment of any fraud. And if any fraud did exist, it was merely in the survey, which is only material as furnishing a description of the land, and is not material with respect to the character of the land as being swamp land or otherwise.

Another qualification of the rule is that the party injured by the fraud must have remained in ignorance of it without any fault or want of diligence or care on his part; for the statute begins to run from the date of the discovery of the fraud, or from the time when the fraud, by reasonable diligence, could have been discovered.

*Wood v. Carpenter*, 101 U. S. 135, 141.

*Amy v. Watertown*, 130 U. S. 320, 324.

*Bailey v. Glover*, 88 U. S. 342.

It appears from this record that as early as 1894 the attention of the Land Department was directed to

the probability of a mistake in the survey, and that long before the defendant purchased, the department had made an investigation, after it had been suggested to it that no lake in fact had ever existed as called for by the field notes. Time and again, anterior to the five years immediately preceding the institution of this suit, the attention of the department was called to the matter by the means already referred to in another division of this brief, and it steadfastly held that it would not assail the survey, and that the title had passed out of the United States under the patent, and had vested in the state and in the state's vendees.

"The act of March 3, 1891, c. 561, 26 Stat. 1099 (U. S. Comp. St. 1901, p. 1521), No. 8, which provides that suits by the United States to annul patents to public lands thereafter issued shall only be brought within six years after the date of the issuance of such patents is a self-imposed statute of limitation, to avoid which, on the ground of fraud, the government must allege specific facts showing that its failure to discover the cause of action within the statutory period was due to concealment by the adverse party or that the fraud is of a self-concealing nature, and the failure to discover it was not due to negligence or want of diligence on the part of the government."

*United States v. Puget Sound Traction Co.*,  
215 Fed. 436.

In the case at bar, the district court entertained the view that, under the equitable rule with reference to concealed fraud, it would be necessary to show that notice of the facts constituting the fraud had been brought to the attention of the land officers of the gov-

ernment through some official channel, in order to start the statute of limitations to running (Rec. 105). Such is not the case. If the government knew, or by the exercise of ordinary care could have known, of the existence of the fraud, this would set the statute in operation. It is not sufficient to merely show a lack of knowledge. The government must go further, and show that such lack of knowledge was not due to negligence on its part. In other words, there must be an affirmative showing of diligence in order to relieve the government of the positive bar imposed on it by the act of Congress.

“The statute here in question was enacted for the very purpose of binding the government. By its very terms it compels the government to suffer by the negligence of its agents or officials. If a patent is obtained fraudulently, and knowledge of the fraud is possessed by the government officials within the statutory period, and yet they negligently fail to bring an action to set it aside until after the period has expired, can we say that such negligence is not imputable to the government. To do so would be to deny the existence or binding force of the statute and to accomplish the repeal of a congressional enactment by the process of judicial construction. The statute is absolute in its terms. It says that actions to annul patents shall only be brought within six years of the date of their issuance. The equitable rule of concealed fraud, qualifying the absolute terms of the statute, was ingrafted upon it by judicial construction. It was, however, the rule as developed, defined, and expounded by courts of equitable jurisdiction, which was thus imported into the statute, and not an emasculated and mutilated remnant of that rule; a comprehensive legal principle, not a legal paradox. Equity recognizes no such doctrine as that the statute of limitations will be tolled by mere ignor-

ance unaccompanied by a showing of due diligence or concealment of fraud. How, then, can it be read into the statute as a rule of equity?"

*United States v. Puget Sound T. L. & P. Co.*,  
215 Fed. 441.

The whole discussion of concealed fraud in this case is outside of the issues. There is not a single allegation of fraud on the part of any one in the pleadings, and there is no proof of fraud. If there were a mistake, or even if there were fraud in the survey of 1841, it occurred or was perpetrated years before Mr. Wilson was born, and it is not pretended that he was a party to it, or that he ever did anything to conceal it, or that he even knew of it.

## VIII.

### Conclusion.

In conclusion, we beg leave to call attention to the fact that the 853 acres in controversy were valueless when the government actually or apparently parted with the title to them, and that they were worth very little when it rejected the suggestion of a possible mistake in the survey, and declared that it had no interest in or jurisdiction over them. The defendant paid the full market value for the lands, and afterwards expended large sums in reclaiming them, and rendering them fit for cultivation and use. It paid \$2,000.00 for extra work in deepening a canal for the special benefit of these lands; and it has paid considerable sums annually

in levee and drainage assessments, thus contributing to *quasi* public works that have further enhanced the value of the lands. According to a stipulation in the record, the lands are now worth more than \$8,500.00 (Rec. 131). The United States has not offered to reimburse the defendant for a single dollar that it spent in improving the lands. If the government were otherwise entitled to recover, it would shock the conscience of a court of equity to permit it to get the benefit of a value which the defendant has created, without any return or compensation therefor. Even the government ought not to "reap where it has not sown, or gather where it has not strawed."

Respectfully submitted,

CHARLES T. COLEMAN,

*For Appellant.*





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UNITED STATES COURT, U. S.

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JAMES D. WAHER

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IN THE  
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

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**No. 110.**

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LEE WILSON & COMPANY, APPELLANT,

VS.

UNITED STATES, APPELLEES.

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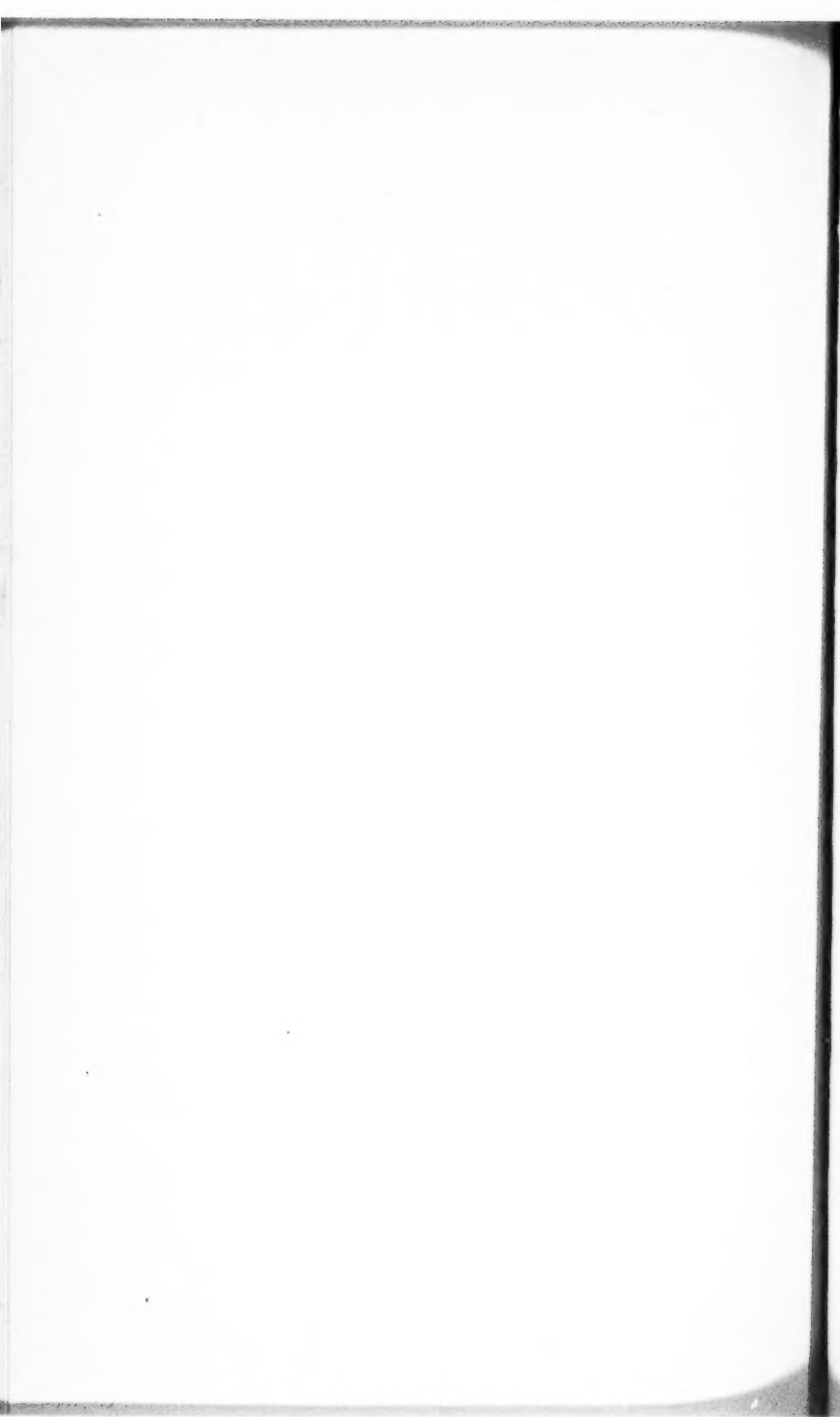
APPEAL FROM THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE EIGHTH CIRCUIT.

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**BRIEF FOR APPELLANT.**

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HENRY D. ASHLEY,  
*For Appellant.*



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**BRIEF AND ARGUMENT.**

We beg to suggest the following on the question of defendants' plea of the Statute of Limitations. The act of Congress of March 31, 1891, relied on, reads as follows:

"That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents."

It is, we believe, conceded in this case, certainly in the opinion of District Judge Trieber, that if the surveys of sections 22, 27, and 26, Township 12 North, Range 9 East, were correct, defendants as riparian owners of all the surveyed lands bordering on "Moon Lake" are, by virtue of the law as laid down by the Supreme Court of Arkansas, owners of the land in controversy. See *Hardin vs. Jordan*, 140 U. S., 371, and cases following. But if there was a mistake in such surveys and no lake in fact existed, then *Horne vs. Smith*, 159 U. S., page 40; *Niles vs. Cedar Point Club*, 175 U. S., page 300, and cases following apply.

In other words, unless a mistake in the surveys be assumed, the Swamp Land patent of April 27, 1858, from the United States to the State of Arkansas and the patent from the State of Arkansas to W. B. Waldron in 1859 of section 22, the north half ( $\frac{1}{2}$ ) of the north one-half ( $\frac{1}{2}$ ) of section 26, and fractional section 27 carried the title to the area of Moon Lake marked "Lake on the original Government plat of Township 12 North, Range 9 East.

This suit, although denominated a suit to quiet the title of the United States to this unsurveyed area of this alleged lake as designated on the Government plat, is in fact a suit to set aside the original survey and official plat of Township 12 North, Range 9 East, so far as the unsurveyed area of Moon Lake as shown on such plat is concerned.

This being true, then this suit, being in fact a suit seeking to obtain a decree confirming the title in the United States as to this area, is in effect, of course, a bill seeking to obtain a decree upholding and confirming the action of the Land Department in setting aside the original survey and plat of 1839-40 and ordering and making the survey of 1910, and is therefore a suit to set aside the original Swamp Land patent of April 27, 1858, because if the survey and plat on which such patent was based be conceded to be correct, the title is conceded to be in defendants.

Such Swamp Land patent of September 27, 1858, contains the following clause:

"Township 12 North, Range 9 East. The whole of the township, except section sixteen, containing fourteen thousand five hundred and sixty-five acres and three hundredths acres, *according to the official plats of survey of said lands returned to the general land office by the Surveyor General.*"

See Record, p. ~~100~~ 87

Now it has been repeatedly held by the Supreme Court of the United States that when a patent of the United States makes this reference to the plat on which it depends for description, namely, *according to the official plats of surveys of said lands, the plat, the notes, the lines, landmarks and other particulars thereon become as much a part of the patent and are as much to be considered in determining what it is intended to include as if they were set forth in the patent.*

*Chapman & Dewey Lumber Co. vs. St. Francis Levee District*, 232 U. S., *loc. cit.*, page 197.

*Cragin vs. Powell*, 128 U. S., 691, 693.

*Jefferis vs. East Omaha Land Co.*, 134 U. S., 178-194.

This being so, unless such patent be set aside, the bottom of Moon Lake would belong to the riparian owners of the fractional sections meandered on such lake by the plat and surveys of 1839 and '40. This plat and survey were an integral part of the patent from the United States to the State of Arkansas dated September 27, 1858, and from the State of Arkansas to Waldron in 1859, and such riparian title having come to defendants by *mesne* conveyances, this suit is in fact a suit to set aside that plat and survey. The plat and survey having been repeatedly held to be a part of the patent in which such plat is referred to and of which it is

a part, a suit to set aside such plat is therefore a suit to set aside the patent.

This, therefore, being a suit to set aside a patent issued in 1858, is barred by the self-imposed limitation put upon itself by the United States through the act of Congress of March 31, 1891.

And not only is this true on principle as above stated, but on authority of the Supreme Court of the United States as laid down in a case on all fours with the instant case in so far as concerns the question of it being a suit to set aside a patent is concerned. See *United States vs. Chandler Dunbar Water Power Co.*, 209 U. S., 447.

Judge Severens, in his opinion in the above case in the court of appeals and which was affirmed by the Supreme Court of the United States, says:

"Counsel for complainant raise two objections to the application of this statute. One is that this suit is not a suit to annul the Chandler patent, but to maintain the title to these islands, and that they attack the validity of the patent only for the purpose of maintaining the title to the islands. This amounts to a contention that although the patent could not be attacked directly, after the time prescribed, yet it may be done indirectly, for the purpose of controlling an incident, the right to which flows from the patent itself. The proposition is too plainly untenable for argument."

152 Fed., p. 25, *loc. cit.*, p. 29.

See also

U. S. *vs.* Norris, 222 Fed., *loc. cit.*, p. 20.

U. S. *vs.* Jones, 218 Fed., p. 973.

U. S. *vs.* Wheless & Wheless, 232 Fed., p. 139.

Moreover, the statute of limitations imposed upon itself by the plaintiff, by the act of Congress of March 31, 1891,

ought in equity to bar this suit, because the surveys of 1839 and '40 and the official plats made therefrom and referred to and an integral part of the Swamp Land patent of 1858, were by a long line of rulings of the Land Department of the United States (beginning before 1894 and extending to 1910) upheld as correct. On the faith of such rulings defendants acted, and therefore this statute ought in equity and good conscience to be held as a bar to this suit. It is being used by defendants, entirely innocent of any fraud or concealment, and moreover is being used as a shield against wrong done them by the vacillation and lack of regard for precedents of a particular Secretary of the Interior contrary to a long line of rulings by former secretaries and not as a sword to defeat anyone whose equitable claims call for any protection by this court.

Kerwin *vs.* Murphy, 83 Fed., p. 275.

103 Fed., p. 104.

109 Fed., p. 354.

189 U. S., p. 35.

Mr. Justice Brewer, in the case of *United States vs. Winona, etc., Railroad*, 155 U. S., *loc. cit.*, page 475, which is a case appealed from the eighth circuit and affirmed by the Supreme Court of the United States, in his opinion in regard to the Limitation Statute of 1891, relied on herein by defendants as a bar, says:

"Congress evidently recognized the fact that notwithstanding any error in certification or patent there might be rights which equitably deserved protection, and that it would not be fitting for the Government to insist upon the letter of the law in disregard of such equitable rights. In the first place it has distinctly recognized the fact that when there are no adverse individual rights, and only the claims of the Government and of the present holder of the title to be considered, it is fitting that a time should come



when no mere *errors or irregularities on the part of the officers of the Land Department should be open for consideration*. In other words, it has recognized that, as against itself in respect to these land transactions, it is right that there should be a statute of limitations; that when its proper officers, acting in the ordinary course of their duties, have conveyed away lands which belonged to the Government, such conveyances should, after the lapse of a prescribed time, be conclusive against the Government, and this notwithstanding any errors, irregularities or improper action of its officers therein.

"Thus in the act of 1891, it provided that suits to vacate and annul patents theretofore issued should only be brought within five years, and as to patents thereafter to be issued such suits should only be brought within six years after the date of issue. Under the benign influence of this statute it would matter not what the mistake or error of the Land Department was, what the fraud and misrepresentations of the patentee were, the patent would become conclusive as a transfer of title providing only that the land was public land of the United States and open to sale and conveyance through the Land Department."

2. Judge Trieber further on, in the opinion in this case below on the subject of the Statute of Limitations, says:

"As the fraud, even if we assume mistake of the original survey was not discovered by the department of the Government charged by law with the management of the public lands until December, 1908, when the Secretary of the Interior made his findings as herein set out, and the motion for review of that decision was not disposed of until February

27, 1909, the statute did not begin to run until that time."

See 214 Federal Reporter, *loc. cit.*, 648.

Now there is no proof or pretense of actual fraud on the part of the surveyors who made this survey, either in the township involved in this case, nor so far as we ever heard of in any other surveys in what is known as the "St. Francis Sunk Lands," in Arkansas, the only claim being that the surveyors mistook temporary overflow for a permanent lake. If Judge Trieber means constructive fraud or "fraud in law," or, in other words, simple mistake, the rule that the six-year statute is subject to the equitable doctrine that in cases of fraud the Statute of Limitations does not begin to run until its discovery by the party defrauded, has no application whatever to this case. Such equitable exception applies only as against the party who seeks affirmative relief on the ground of fraud maintained by his opponents. This is clearly shown by the opinion of Judge Carland in the principal case relied upon by Judge Trieber in refusing to apply the bar of the statute in this case, namely, *United States vs. Exploration Co.*, 203 Fed., 387. In that case Judge Carland in support of the rule quoting from the opinion of Mr. Justice Miller in *Bailey vs. Glover*, 88 U. S., 342, says:

"In suits in equity, where relief is sought on the ground of fraud, the authorities are without conflict in support of the doctrine, that where the ignorance of the fraud has been produced by *affirmative acts of the guilty party in concealing the facts from the other*, the statute will not bar the relief provided suit is brought within the proper time after the discovery of the fraud."

In other words, the equitable rule only applies to the party who himself has been guilty of fraud and of the con-

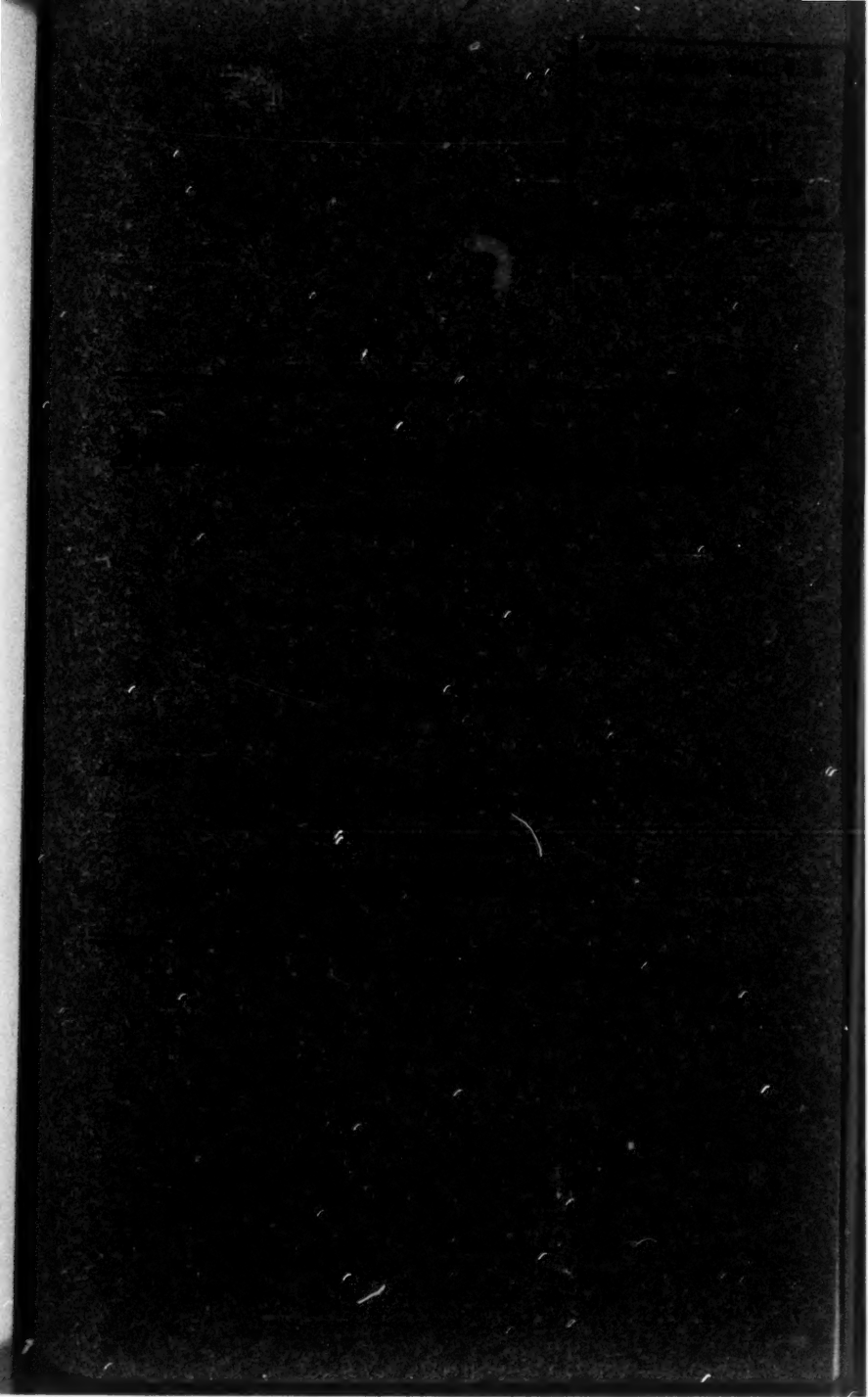
realment of it, and who himself pleads the statute as a bar. If mistake was meant, it must be a mistake which the defendants have in some way caused or concealed.

The whole theory of equitable exception to the absolute bar of the statute is not to give the defendants the opportunity, through pleading the Statute of Limitations as a bar, to take advantage of their own wrong.

It seems to us too clear to require further argument or citation of authorities, that the bill in this case must be dismissed because the United States is barred against bringing this suit by virtue of the beneficent provisions imposed upon itself by the act of Congress of March 31, 1891.

Respectfully submitted,

HENRY D. ASHLEY,  
*For Appellant.*



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# In the Supreme Court of the United States.

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*APPEAL FROM THE UNITED STATES CIRCUIT COURT OF  
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**BRIEF FOR THE UNITED STATES.**

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## **STATEMENT.**

It is unnecessary to preface this brief by a restatement of the facts out of which this controversy arises. It suffices to summarize the Government's contentions, both of law and fact, as follows:

The lands in controversy were in fact swamp lands and not "lake" as erroneously shown by the original official survey and plat. They were unsurveyed and were never selected by the State, or confirmed or patented to it. While the inchoate right passed to the State by the Swamp Land Act of September 28, 1850, 9 Stat. 519, c. 84, the title always remained

in the United States, and the inchoate right was relinquished by the compromise of 1898.

The Government remained in ignorance of the true character of these and similar lands in the St. Francis Basin until long after the compromise; and each expression of opinion by the Secretary of the Interior and the Commissioner of the General Land Office during that time shows upon its face that it was given in the belief that the surveys and plats were correct and that the lands were covered by lakes, which have since receded or dried up; and, consequently, such expressions did not and could not operate as an equitable estoppel.

Notice reliably indicating the true character of the lands first came to the Land Department in 1907, when a special agent made a report concerning them and similar lands. The Government thereupon acted promptly. An investigation was made in the field; all parties interested were notified and heard; the Secretary of the Interior rendered his decision (Dec. 12, 1908), holding that the title was in the United States (37 L. D. 345); and, on a motion for review, filed another opinion (Feb. 27, 1909), adhering to his decision (37 L. D. 462). The lands were then surveyed and this suit was promptly commenced, namely, on August 4, 1911.



## ARGUMENT.

## I.

**The plat and field notes of the original survey were false. There was no lake.**

The District Court found from the evidence (R. 92, 95, 97; 214 Fed. 630) that the area in question in this suit, which was designated on the official plat of survey as "lake" and in the field notes as a navigable lake (R. 42, 45), is in fact land and was land at the time of that survey, namely, in 1839 and 1840, and that no lake was there. A similar finding was made by the Circuit Court of Appeals (R. 123; 227 Fed. 827), which said (R. 126):

\* \* \* and as there was no lake, the meandered area could not pass as riparian to the fractional sections.

In this court there is no assignment of error attacking the correctness of these findings, and, indeed, the appellant in its brief refers to a stipulation relating to the evidence in which it is declared (R. 9):

\* \* \* The defendant will not assail the finding of the court as to the non-existence of a lake at the respective dates mentioned.

It is therefore to be taken as a fact in this court that at the time of the original survey there was no lake covering the area in controversy. The Government concedes that these lands were swamp within the meaning of the swamp-land grant of 1850.

## II.

**The lands in controversy were not embraced in the patent issued to the State on September 27, 1858.**

This question is set at rest by the recent case of *Chapman & Dewey Lumber Co. v. St. Francis Levee District*, 232 U. S. 186; 234 U. S. 667.

In that case the facts relating to the lands themselves, the official plats of survey, and the descriptions contained in the patents were substantially identical with the facts in this suit. In both cases the lands in controversy were meandered. In the *Chapman-Dewey* case they were designated on the plat as "sunk lands" and in this case as "lake." There, as here, they were in fact swamp lands within the meaning of the act of 1850. There the description in the patent was:

"Township 12 North of Range 7 East. The whole of the Township (except Section sixteen), containing thirteen thousand eight hundred and fifteen acres and sixty-seven hundredths of an acre \* \* \* according to the official plats of survey of said lands returned to the General Land Office by the Surveyor General." (232 U. S. 195.)

Here the patent described the lands conveyed as:

Township Twelve (12) North, Range Nine (9) East.

The whole of the township except Section sixteen (16) containing fourteen thousand five hundred and sixty-five acres and three hundredths of an acre, according to the official plats of survey of the said lands returned to the

General Land Office, by the Surveyor General.  
(R. 87-88.)

The acreage as given in each of the patents was the sum of the acreages of the subdivisions and fractional subdivisions composing the township *as shown upon the face of the official plat of survey*, excluding, of course, the meandered area. In the *Chapman-Dewey* case this court held that the patent conveyed title only to the fractional areas actually surveyed, leaving the title of the meandered area in the United States. The reasons given for the conclusion are stated on pages 197 and 198, and the court cited—

*Cragin v. Powell*, 128 U. S. 691, 696;

*Jefferis v. East Omaha Land Co.*, 134 U. S. 178, 194;

*Ainsa v. United States*, 161 U. S. 208, 229;

*Security Land Co. v. Burns*, 193 U. S. 167, 180;

*Niles v. Cedar Point Club*, 175 U. S. 300, 306;

*Hardin v. Shedd*, 190 U. S. 508, 520;

*French-Glenn Live Stock Co. v. Springer*, 185 U. S. 47;

3 Washburn on Real Property, 5th ed., 427.

We are content to rely upon that decision, and the citations by which this court supported it, without further argument.

Indeed, counsel for appellant himself concedes that the patent in this case was not sufficient of itself to carry title to the State. See page 90 of his brief, where he says:

The ruling of the Circuit Court of Appeals would undoubtedly have been correct, but for the operation of the act of 1857.

Part two of his brief, in which he discusses "The Title as Based on the Patent" (pp. 34-53), is merely devoted to an attempt to show that the patent conveyed a *prima facie* title, whatever that may be.

### III.

**The Swamp Land Act of 1850 passed merely an inchoate title.**

In *Rogers Locomotive Machine Works v. American Emigrant Co.*, 164 U. S. 559, 570, 574, it was said:

\* \* \* While, therefore, as held in many cases, the act of 1850 was *in praesenti*, and gave an inchoate title, the lands needed to be identified as lands that passed under the act; which being done, and not before, the title became perfect as of the date of the granting act.

\* \* \* \* \*  
 \* \* \* It belonged to him [the Secretary of the Interior], primarily, to identify all lands that were to go to the State under the act of 1850. When he made such identification, then, and not before, the State was entitled to a patent, and "on such patent" the fee-simple title vested in the State.

In *Little v. Williams*, 231 U. S. 335, this court, quoting the above language, said (p. 340):

\* \* \* What was there said has since been regarded as the settled law upon the subject. *Michigan Land & Lumber Co. v. Rust*, 168 U. S. 589, 592; *Brown v. Hitchcock*, 173 U. S. 473, 476; *Niles v. Cedar Point Club*, 175 U. S. 300, 308; *Ogden v. Buckley*, 116

Iowa, 352; *Birch v. Gillis*, 67 Missouri, 102; *Carr v. Moore*, 119 Iowa, 152, 159.

The appellant himself does not attribute to the act of 1850 any greater effect (Brief, 34).

#### IV.

**Title to the land in controversy was not confirmed to the State by the act of March 3, 1857, c. 117, 11 Stat. 251.**

That act, excluding the proviso, reads:

That the selection of swamp and overflowed lands granted to the several States by the act of Congress, approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and the act of the second of March, eighteen hundred and forty-nine, entitled "An act to aid the State of Louisiana in draining the swamp lands therein," heretofore made and reported to the Commissioner of the General Land-Office, so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, be and the same are hereby confirmed, and shall be approved and patented to the said several States, in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law:

The important language is:

That the selection of swamp and overflowed lands \* \* \* heretofore made and reported

to the Commissioner of the General Land-Office \* \* \* be and the same are hereby confirmed \* \* \* to the said several States.

By section 2 of the Swamp Land Act itself, 9 Stat. 519, it was made the duty of the Secretary of the Interior to identify the lands granted by the act. The language is:

That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the State of Arkansas; and at the request of said governor, cause a patent to be issued to the State therefor.

See *Little v. Williams*, *supra*, and authorities there cited.

It lay with the Secretary of the Interior, therefore, to prescribe the administrative methods for identifying and describing the lands. This administrative plan is set forth in defendant's Exhibit 12 (R. 67), which is a copy of a circular letter of instructions addressed by the Commissioner of the General Land Office *to the surveyors general of the United States* within the several States. A copy of these instructions, it is true, was sent to the governor of the State for his information (R. 69). The circular to the surveyors general contained the following directions (R. 67):

You will please make out a list of all the lands thus granted to the state, designating those

which have been sold or otherwise disposed of since the passage of the law and the price for them when purchased.

The only reliable data in your possession from which these lists can be made out, are the field notes of the surveys on file in your office; and if the authorities of the state are willing to adopt these as the basis of those lists, you will so regard them. If not, and those authorities furnish you satisfactory evidence that any lands are of the character embraced by the grant, you will so report them.

It is perfectly clear from these instructions that if the States themselves chose to make out lists of the lands which they considered as swamp, those lists were to be filed by them with the surveyors general for their States. This, indeed, became and was the general practice. It was followed in this case. The list of selections under which the appellee claims, so far as it applies to the lands in T. 12, R. 9, is shown in defendant's Exhibit "C" (R. 86), as follows:

*List of "Swamp and Overflowed lands" situated in Townships North of the base line and East of the 5th Principal Meridian, in the Helena Land District, selected by the State Locating Agents.*

Part of section.	Section.	TOWNSHIP.	Range.	Acres.	Remarks.
X	X	X	X	X	X
Township.		12.	9.	15,003.97.	
X	X	X	X	X	X

SURVEYOR'S OFFICE, *Little Rock.*

I, hereby certify, that the above and foregoing list (marked A), is a true and correct transcript from the original filed in the office of Surveyor General, by the Governor of the State of Arkansas, with only

such modifications as to make the description of the several tracts agree with the plats on file in this office.  
September 22nd, 1852.

Division K.

L. GIBSON,  
*Surveyor General.*

This is the list, and the only list, which in the language of the act of 1857 was "made and reported" to the Commissioner of the General Land Office. This list of course embraced numerous other tracts of land, and the certificate of the surveyor general thereto states that it is a true and correct transcript from the original filed in his office by the governor, with only such modifications as to make the descriptions agree with the official plats. There is nothing whatever in the record to show that the particular description with which we are here concerned was modified at all by the surveyor general. Whether or not the number, 15,003.97 (acres), was in the original list filed with the surveyor general by the governor is left wholly to conjecture. If the acreage was not expressed in the original list, then of course it was inserted by the surveyor general; as so modified, the list was "reported" to the Commissioner of the General Land Office, and it was upon the list so reported that the confirmation of the act of 1857 operated. It is immaterial whether in fact the acreage was expressed in the original list or was inserted by the surveyor general. The 15,003.97 acres so reported is the exact total of the acreages of the subdivisions and fractional subdivisions in the township, including section 16 which had already passed to the State under the school grant. Now, a



full township comprises 23,040 acres, and the fact that the list as made and reported called, not for the acreage of a full township even approximately, but only for the exact total of the acreages shown upon the face of the official plat of survey, demonstrates beyond any possibility of doubt that this selection was made *in accordance with the official survey*. In other words, the internal evidence of the document itself is as conclusive as if there had been appended to the description the words afterwards used in the patent to the State, namely,

according to the official plats of survey of the said lands returned to the General Land Office, by the surveyor general.

It is to be especially noted that in determining what the selection list itself includes, the rule prevailing in the construction of deeds or patents, namely, that a statement of the acreage intended to be conveyed is to be controlled by the boundaries when clearly described, is wholly inapplicable. The question here is not whether boundaries or quantity shall control, but whether or not this selection was made according to the official survey of the Government lands; and when it appears, as it does here, that the total acreage expressed in the selection was the total of the acreages shown upon the face of the plat of the official Government survey, then it is clear that that survey formed the basis of the selection; and it would be so even if the discrepancy between the total of such acreage was only slightly less than a full township.

In view of the constant reiteration by counsel for appellant that the State selected the whole township, it is worthy of note that in this list the word "whole" does not precede the word "township."

In connection with this constantly reiterated statement appellant quotes his version of the confirmatory Act of 1857, not from the Statutes at Large but from the Federal Statutes Annotated (Appellee's Brief, bottom of page 72). The court will note that, as there quoted, there is an important difference in language from the act as published in the Statutes at Large. (*Supra*, p. 7.) In the Federal Statutes Annotated, vol. 6, p. 409, the act is made to read:

All lands selected and reported to the General Land-Office as swamp and overflowed lands *by the several states \* \* \** are confirmed to said states respectively. [*Italics ours.*]

This reading lends itself to appellant's argument in that it appears to contemplate that the States themselves shall report their selections direct to the General Land Office, whereas under the true reading of the statute and under the administrative directions prescribed by the Department of the Interior, the lists of selections were to be made and reported to the Commissioner of the General Land Office by the surveyor general of the United States.

It is true that the instructions given to the surveyors general seemed to contemplate that States might select unsurveyed lands, furnishing proofs that they were swamp in character. In order to include such lands

in a selection, however, it was necessary that they should be described by natural monuments or boundaries so that they could be identified. Nothing of the kind, however, was done in respect to the lands here in controversy. There is not a particle of evidence in the record that the area designated as lake on the plat of official survey was ever examined as to its character or otherwise by any agent of the State, or that any agent of the State ever knew that it was not in fact covered by a lake, as indicated by the official plat. Had the State included these lands by description or had it intended to include them under the word "township," we would expect to find some protest against the action of the surveyor general in adding (if he did add) the acreage as shown upon the official plats of survey; or some objection to the terms of the patent when it subsequently issued specifying the same number of acres (less the area of section 16) and containing an express reference to the official survey and plat. Nothing of the kind appears. The governor accepted the patent, and there is no evidence whatever that the State itself ever claimed the land. The Circuit Court of Appeals held that the acceptance of the patent, expressing on its face the acreages of the subdivisions and fractional subdivisions shown on the plat and with an express reference to the official survey, was conclusive. (R. 124, 125.) But whether that be true or not, such acceptance is the strongest possible evidence that the State did not claim by previous selection and confirmation more lands than were included in the patent.

The Secretary of the Interior, in his decision of 1908, ordering a survey of these and other "sunk lands," said (37 L. D. 345, 349):

Second, although the patents for the surveyed adjoining tracts issued many years ago, no claim was ever asserted by the state or any of its transferees to further lands under selections made and patents issued thereon, until the present controversy arose.

There is nothing whatever in this record to impeach the correctness of that statement.

## V.

### **Title was not confirmed to the State or the St. Francis Levee District by the compromise of 1898.**

As we have seen, the State by the act of 1893 conveyed to the St. Francis Levee District title to all its lands within the boundaries of that district except school lands. Assuming that this included the State's inchoate right to unselected swamp lands, the State's relinquishment by the Compromise Act of 1898 of its inchoate rights was binding upon the district as a "mere political subdivision of the State." This was expressly held in *Little v. Williams*, 231 U. S. 335, 340-341. See also *Rogers Locomotive Machine Works v. American Emigrant Co.*, 164 U. S. 559, 576, 577.

It is contended, however, as we understand the argument, that by the State's grant to the Levee District there passed to the latter the title of one who had purchased from the State, and that title was confirmed in the district by section 3 of the Compromise Act of April 29, 1898, 30 Stat. 367, c. 229.

Section 3 reads:

That the title of all persons who have purchased from the State of Arkansas any unconfirmed swamp land and hold deeds for the same be, and the same is hereby, confirmed and made valid as against any claim or right of the United States, \* \* \*.

The facts giving rise to this contention are in brief as follows:

In 1859, and after the receipt of the patent from the Government, the State issued patents to one W. B. Waldron conveying at least all the lands surrounding the meandered area. Whether they purported to convey the meandered area does not directly appear. Appellant asserts that whether they did so in express words or not, such was their legal effect. It is stipulated that these patents were never recorded and that the originals have been lost. (R. 5, par. 51 of appellant's "Condensed Statement of Evidence.") Later, and between 1883 and 1888, title to all these Waldron lands was again vested in the State by forfeiture for nonpayment of taxes, and proceedings based thereon. They were described in what is styled as the overdue tax decree, rendered by the Circuit Court of Mississippi County, as

All of section 22; N. E.  $\frac{1}{4}$  of section 27; N. W.  $\frac{1}{4}$  of 27, S. W.  $\frac{1}{4}$  of section 27, and S. E.  $\frac{1}{4}$  of 27, T. 12 N., R. 9 E,

acreage not given. (R. 3, par. 28, "Condensed Statement of Evidence.")

Similar descriptions were contained in other tax decree lists of lands originally patented to Waldron, which were forfeited to the State. (R. 4, par. 41.)

When, thereafter, and on March 29, 1893, the State conveyed to the St. Francis Levee District all its lands within that district, except the school lands, this conveyance, appellant contends, carried also the Waldron title; and this title, it is further contended, was also strengthened in the Levee District by a decree entered in the chancery court of Mississippi County on December 12, 1894, confirming the district's title to

“All of section 22, all of Section 27; N.  $\frac{1}{2}$  of section 26, T. 12 N., R. 9 E.” [R. 3, par. 29.]

As above stated, the patents from the State to Waldron were lost and were never recorded. The appellant, however, attached as Exhibit “E” to the answer a copy of the record of the State land office showing in part the lands sold to Waldron (R. 89). That record described the lands as—

Frl. Sec. 22, T. 12 N., R. 9 E., 164.07 acres, giving the price as 50 cents per acre and the total amount paid as \$82.04.

The Government on its part adduced from the State commissioner of lands a certificate showing that W. B. Waldron entered the following lands (R. 62):

Frl. Sec. 22 T. 12 N. R. 9 E., 164.12 acres.  
Frl. Section 26 T. 12 N. R. 9 E., 623.83 acres.

Frl. Section 27 T. 12 N. R. 9 E., 291.98 acres.

The certificate states that these lands were entered as swamp lands and that patents issued to Waldron (R. 62). In the absence of the patents themselves the conclusive presumption is that they conveyed by proper description the lands which he had entered and which the State's own land records show had been sold to him, and no others. (Exhibit "E," *supra*.)

As the State did not sell or attempt to convey these meandered lands to Waldron, but only the fractional sections which bordered them, it is entirely immaterial what descriptions were contained in the tax proceedings by which the lands were revested in the State. And in any event the State could give to Waldron no title to lands owned by the United States, nor could it receive from him or his grantees by tax proceedings any lands belonging to the United States. When the State was revested with title it had exactly the title which it obtained from the United States; the Waldron title, as a separate entity, ceased to exist; and when by the legislation of 1893 the State granted all the lands owned by it (except school lands) to the St. Francis Levee District, it granted, of course, only those to which it had title.

For the same reasons the decree rendered December 12, 1894, by the chancery court of Mississippi County, confirming title in the Board of Directors of the St. Francis Levee District, could not vest title in that district to any lands still owned by the United States.

There is no claim that the United States was a party to that suit; nor does it appear who were the

parties defendant. It may be presumed that they were parties claiming under Waldron and in opposition to the tax decrees revesting title in the State. If that were the case, the decree simply amounted to a judicial declaration that the tax proceedings operated to convey to the State title to all of the lands in ~~section~~ 12 which Waldron had received from the State by the patents of 1859, and, as he had received no title to the area here in controversy, the decree could not vest any title thereto in the Levee District.

As we have seen, the records of the State show that Waldron was not a purchaser from the State of the "unconfirmed swamp lands" here in controversy; and even if the Compromise Act had been passed before the tax forfeiture proceedings, the section above quoted would not have confirmed title in him or his grantees.

The argument on this subject assumes that by the passage of the lands from the State to Waldron and back again to the State, something was added to the title and kept alive in the State which thereafter passed to the Levee District and enabled it to pose as a grantee of Waldron, and therefore a purchaser from the State within the meaning of section 3. This is dealing with mere figments of the imagination.

In connection, however, with his contention that title was confirmed to the State by the act of 1857, counsel has evolved at great length his theory of "Plat-Lake" and *prima facie* title. He attempts to support this theory mainly by reference to *Hardin v. Jordan*, 140 U. S. 371; *Mitchell v. Smale*, 140 U. S.



406; *Kean v. Calumet Canal Co.*, 190 U. S. 452, 460; *Hardin v. Shedd*, 190 U. S. 508, 520. In all of those cases, however, the official surveys *were correct*, and the areas meandered were *in fact* covered by bodies of water, either navigable or nonnavigable. The lands under these waters were held to have passed from the Government, not because they were described or included in the patents or confirmation, but because under the laws of the States in which they lay they were regarded as an incident to the riparian lands which *were* patented or confirmed. But where there is in fact no water, nothing, of course, can pass by riparian right.

Counsel also contends, or seems to contend, that the area here in question was in law surveyed land. To support this contention he relies mainly upon *Kean v. Calumet etc. Co.*, *supra*, and certain Indiana cases cited and discussed in the opinion. In that case the majority opinion, after finding that the State law caused the patent for the riparian lands to carry title to the lands under the waters (and that would seem to have been sufficient to dispose of the case), went on to say (p. 460):

It is said that the land under water was not embraced in the survey of 1834. It would seem from the plat and field notes that the sections and dividing lines were clearly marked off and posts set. The case is similar to *Kean v. Roby*, 145 Indiana, 221, where the survey was pronounced sufficient. No difficulty was felt on the ground that the survey did not cover the submerged land in *Hardin v. Jor-*

*dan*, 140 U. S. 371. But furthermore, the land was selected as "swamp and overflowed lands" by the State. It not appearing otherwise, the selection must be presumed to have included the land overflowed, and if so it was confirmed to the State by the act of March 3, 1857, c. 117, 11 Stat. 251; Rev. Stat. § 2484. The confirmation encounters none of the difficulties of cases like *Stoneroad v. Stoneroad*, 158 U. S. 240. The land surrounding the water, at least, was surveyed, so that the identification of the submerged portion was absolute. We are of opinion that the State of Indiana got a title to the whole land in dispute.

The Supreme Court of Indiana had decided the case (150 Ind. 699) on the authority of its own previous decision in *Kean v. Roby*, 145 Ind. 221. In the latter case that court, construing the statutes relating to Federal surveys and applying them to the plats and field notes, held that the section lines should be protracted across the lake and that the lake, as well as the lands bordering it, was therefore included in the survey; and consequently that the State's selection, being made in terms of whole sections, covered the lake as well as the fractional parts of the sections delimited by the meandered line. This court, in the language above quoted, seemed to accept as correct the views of the State court on that question.

Whatever may be said as to this method of considering lines as protracted across small meandered nonnavigable lakes, which actually existed at the

time of survey, it has never been applied to a case in which an area that ought to have been surveyed as *land* was erroneously or fraudulently meandered and platted as a *lake*. If this method had been applicable to such cases this court could not have made the decisions it did make in *Horne v. Smith*, 159 U. S. 40; *French-Glenn Live Stock Co. v. Springer*, 185 U. S. 47; *Niles v. Cedar Point Club*, 175 U. S. 300; *Security Land and Exploration Co. v. Burns*, 193 U. S. 167; *Chapman & Dewey Lumber Co. v. St. Francis Levee District*, 232 U. S. 186 and 234 U. S. 667. Each of these cases involved areas which should have been surveyed as land, but through error or fraud were meandered as water. In none of them did this court give any countenance to the theory that the lines should be protracted so as to embrace those areas and class them as surveyed lands. Indeed, in the *French-Glenn* case the court expressly rejected the theory, as follows (p. 52):

\* \* \* But if there never was such a lake—no water forming an actual and visible boundary—on the north end of the lots, it would seem unreasonable, either to prolong the side lines of the survey indefinitely until a lake should be found, or to change the situs of the lots laterally in order to adapt it to a neighboring lake.

In each of the cases last above cited this court held that the land, erroneously meandered, was unsurveyed.

## VI.

**The United States is not estopped from asserting that there was a mistake in the original survey or from claiming title to the lands in controversy.**

The law in relation to estoppels against the Government was stated so definitely and clearly in the opinion of the District Court (R. 108) that we are content to quote from that opinion and rely upon the principles stated and the authorities cited therein.

\* \* \* There can be no doubt that in a suit in equity the claims of the Government appeal to the conscience of the chancellor with the same, but with no greater or less force, than those of private individuals under like circumstances, and they are determinable by the same rules and principles. *State of Iowa vs. Carr*, 191 Fed. 257, 112 C. C. A. 477, *Hemmer vs. United States*, 204 Fed. 898, — C. C. A. — and authorities there cited. It is equally well settled that the Government cannot be estopped by the unauthorized or fraudulent acts of its agents or officers, or their mistakes. *Hunner vs. United States*, 5 Pet. 173; *The Floyd Acceptances*, 7 Wall. 666; *Filor vs. United States*, 9 Wall. 45, 48; *Whitesides vs. United States*, 93 U. S. 247, 257; *Moses vs. United States*, 166 U. S. 571, 594, 595; *Pine River Logging & Imp. Co. vs. United States*, 186 U. S. 279, 291.

To cause an estoppel, the representations relied on must have been made with full knowledge of the facts by the party to be estopped, unless his ignorance was the result of gross

negligence or otherwise involved gross culpability. *Henshaw vs. Bissell*, 18 Wall. 255, 271; *Brant vs. Iron Company*, 93 U. S. 326, 336; *Farmers & Merchants Bank vs. Farwell*, 58 Fed. 633, 7 C. C. A. 391.

Another essential element of estoppel is that the party pleading it should have relied and acted upon the conduct of the other, and be induced to act or refrain from acting so that he will be substantially injured if the other party should be allowed to repudiate his actions. *Brant vs. Iron Company*, *supra*. *Ketchum vs. Duncan*, 96 U. S. 659, 666; *Bloomfield vs. Charter Oak Bank*, 121 U. S. 121, 131; *Comer vs. Felton*, 61 Fed. 731, 738, 10 C. C. A. 28, 35; *New York Life Ins. Co. vs. Slocumb*, 177 Fed. 842, 101 C. C. A. 56; *State Bank vs. Hawkeye Gold Dredging Co.*, 177 Fed. 164; *Rhodes vs. Cissel*, 82 Ark. 367.

A. As one ground for estoppel appellant relies upon certain notations appearing upon the records of the local land office (R. 65, defendant's Ex. 7). It does not appear when or by whom these notations were made. We may perhaps presume that they were made by the proper local officer upon receiving from the Commissioner of the General Land Office the selection list approved by the Secretary in 1853. One of the notations was in the following language:

Whole of Sec. 22, Township 12 N. Range 9.  
Selected as Swamp under act Sept. 28/50.  
Approved May 11, 1853.

A similar notation was made as to section 27. Counsel interprets these notations as showing that

the State selected and the Secretary approved the selections of the whole of the sections named, including the meandered area. As to these notations several observations may be made:

*First.* These notations speak in terms of townships and sections. When these words are used to describe lands of the public domain, or formerly embraced therein, they necessarily refer to the Government surveys.

\* \* \* The government survey creates, not merely identifies, sections of land. *Sawyer v. Gray*, 205 Fed. 160, 163.

\* \* \* The declaration describes the lands which it seeks to recover by the descriptions of the government survey, and this, without more, must be deemed to refer to the recognized and authorized survey. *Michigan Land & Lumber Co. v. Rust*, 68 Fed. 155, 164.

Description of lands, according to terminology employed in the system of government surveys and plats of land, is necessarily a reference to the plats of those surveys; for those terms are meaningless unless so considered with reference to the surveys and plats. There is nothing known of townships, sections, parts of sections of land, except such as are described in the government surveys. Therefore, giving the word "township" used in the stipulation of facts, the meaning which we must attribute to the parties who employed the term, it has reference to the townships surveyed and platted by the government

surveyors, and means the townships according to the surveys and plats. *Little v. Williams*, 88 Ark. 51, 52.

See also *Arkansas Sunk Lands*, 37 L. D. 345; *Southern Pacific Railroad Company v. Burlingame*, 5 L. D. 415, 417, and authorities cited.

When, therefore, these notations speak of the whole of a designated section, which is rendered fractional by the meandering out of an area as "lake," they mean merely that the whole of the fractional section, that is, the section as established and created by the survey.

*Second.* If, however, these notations are to be construed as including the area meandered out, then the entries were made without authority and in excess of the power possessed by the local land officials who made them. Their duty was to note only the lands called for by the approved selection list and, as we have shown, that list included only the surveyed lands.

*Third.* If these notations are to be construed as claimed by appellant, still no estoppel could arise against the United States for the further reason that, at the time the notations were made, and until the compromise of 1898, the Government, on the record as it then existed, had no duty to perform in reference to the lands. The correctness of the survey had not been questioned. The record showed a lake, either navigable or nonnavigable; and the lands under it had passed to the State either as a sovereign or as a riparian owner.

*Fourth.* Appellant did not rely upon these notations, for, on December 10, 1892, he addressed a letter to the Commissioner of the General Land Office inquiring "how to proceed to obtain Government lands being in lakes and bayous which has never been surveyed" (R. 86, defendant's Ex. 27). Appellant relies upon that letter and the Commissioner's answer thereto as creating an estoppel. They could have no tendency to create an estoppel, unless they referred to the lands in controversy; and we must therefore assume that they did. But why did Mr. Wilson ask how he could acquire title to this land from the Government if he relied on the notations as showing that title had passed to the State?

*Fifth.* As the District Court pointed out, no estoppel could arise against the Government by any acts done by its officers prior to the Compromise Act of 1898; for, whether the survey was correct or not, and even if the lands in controversy were known to be swamp lands and not "lake," the inchoate right thereto was in the State, and it had a right to select and perfect its title to them. Prior to the compromise, therefore, the United States was not at all concerned about the lands.

**B.** Appellant also bases its claim of estoppel upon a number of letters and communications addressed from time to time by the Secretary of the Interior and the Commissioner of the General Land Office to persons making inquiries as to the title of lands in Arkansas which were in a somewhat similar situation to the lands here in controversy.



Counsel uniformly refer to these letters and communications as "decisions," but, as was said by the District Court (R. 109)—

\* \* \* they were no decisions but merely expressions of opinions as to the lands in controversy, based upon the facts as shown by the records of the Department. There was no contest before the Department as to these lands which called for a decision; there were no parties before it seeking an adjudication; there were no issues to be decided; no one had an opportunity to be heard. For this reason it was held in *Chapman & Dewey Land Co. vs. Bigelow*, 77 Ark. 338, 350, where similar lands were involved, that such "letters are of no binding force or effect upon any one, and that they were properly excluded by the trial court."

None of these communications made any misrepresentation as to the facts affecting these lands. On the contrary, each communication was called forth by an inquiry which assumed that the original surveys were correct and that the lands inquired about were in fact beds of lakes or sunk lands at the time of those surveys. Thus, the first of these letters, which is dated November 30, 1894, and addressed by the Secretary of the Interior to the Commissioner of the General Land Office (R. 74), was called forth by a letter from H. N. Pharr, chief engineer of the St. Francis Levee District, to the Secretary of the Interior (R. 63). This letter states that at the time of the original survey a considerable part of the lands

within the Levee District were occupied by lakes and swamps that were "meandered out"; and that (R. 64)

\* \* \* numerous overflows since then have filled up these lakes and swamps very much and changed largely the general features of the country. To such an extent has this filling up been done, that the areas and depths of these lakes and swamps have been very much reduced and around their margins forests of large timber now stand on space then occupied by water \* \* \*.

This inquiry was referred by the Secretary to the Commissioner of the General Land Office for investigation and report, and, the Commissioner having reported (R. 72-74), the Secretary addressed to him the letter now under consideration. After referring to the statements contained in the letter of the chief engineer of the St. Francis Levee District as to the situation and condition of these lands, he expressed his concurrence in the conclusions of the Commissioner that the Government had no authority to survey or dispose of "the lake beds referred to in said communication," citing *Hardin v. Jordan*, 140 U. S. 371, 406; *Mitchell v. Smale*, 140 U. S. 406, and certain departmental decisions.

So, in the letter of Commissioner Binger Herman to Senator James K. Jones (R. 75-76), the Commissioner refers to the inquiry of one C. L. Moore, addressed to the Senator and by him referred to the Commissioner, and says:

He states that at the time of the U. S. survey of said township the section was frac-

tional and abutted upon the lake but that since that time the lake has "shrunk" so that a piece of land exists  $\frac{1}{2}$  a mile wide on one part and over  $\frac{1}{4}$  of a mile at narrowest part.

The expression of opinion by the Commissioner is based upon the assumption that the statement of Mr. Moore is true and says:

\* \* \* the beds of such lakes or lands uncovered by the recession of the waters thereof since the survey and disposition of the adjacent lands are not regarded as public lands of the United States \* \* \*.

Again, in the letter of Commissioner Dennett to R. B. Macon (R. 76), referring to an inquiry from one Herman Cross, the Commissioner, after stating that he was unable to identify the particular lands inquired about, says:

\* \* \* if Mr. Cross refers to any unsurveyed lands bordering upon meandered lakes in said county, *which have formed since the survey and disposition of the adjacent lands*, the same are not regarded as public lands of the United States \* \* \*. [Italics ours.]

R. E. Lee Wilson, himself, in his letter of December 10, 1892, to the Commissioner of the General Land Office (R. 86), says:

I write you to learn how to proceed to obtain Government lands being in lakes and bayous which has never been surveyed.

The Commissioner in his answer (R. 6), said:

\* \* \* I have to state that when in the extension of the lines of the public surveys a lake is meandered its area is segregated from the public domain, and beds of meandered lakes or lands covered by the recession of the waters of such lakes since the original survey of the township embracing the same, where the lands or lots bordering upon the lakes have been entered or disposed of by the government, in accordance with the official plats, are not subject to survey and disposal by the United States, for the reason that they belong to the adjacent land owners.

Moreover, if this letter had any reference to the lands here in controversy (which does not appear), it is worthy of note that Mr. Wilson did not then, or within a reasonable time thereafter, take any action in reliance upon it; for his first purchase from the St. Francis Levee District was made June 3, 1898 (R. 8, par. 42).

It is thus demonstrated that each of the communications from officers of the Government relied on to create an estoppel was based upon inquiries which assumed that the record of the official survey was in fact correct, and there is no shade of foundation for any claim that the Government officials misled the parties inquiring. Moreover, not one of the inquiries or answers contained any reference whatever to the particular lands here in controversy or the lake, which, according to the survey, covered these lands.

This leaves for consideration only the letter of November 17, 1902, addressed by Secretary Hitchcock to the Commissioner of the General Land Office (R. 77-82). It was called forth by a letter from the Commissioner in relation to an alleged timber trespass upon unsurveyed lands within the St. Francis Levee District "known as sunk lands." It appears from the letter that an agent of the General Land Office had seen the lands and expressed the opinion that at the time of the survey they were simply covered by the overflow of the Mississippi; that they were agricultural lands and "not covered by permanent bodies of water and therefore not subject to State or riparian ownership." The Secretary then refers to the fact that the plats and field notes of the original surveys show that the lands were meandered as lakes and rivers having a depth of from five to fifteen feet of water. He also refers to some of the previous communications (which have been considered above), and particularly to the letter and statements of fact of the chief engineer of the Levee District, dated June 25, 1894, and reaches the following conclusion (R. 80):

\* \* \* The returns of the township surveys show upon their face that what are now alleged to be unsurveyed portions of said townships were then actual bodies of water and were properly meandered as such. There is nothing in the report of the special agent, or in any of the papers submitted therewith, to impeach those returns as to the physical conditions of land and water at that time.

The Secretary concludes (R. 81):

\* \* \* The surveyed lands in said townships adjacent to the meandered waters having been disposed of, as appears from your letter of July 10, 1902, and it not being shown that said waters were not properly meandered, and the jurisdiction and control of the government over the lands in question having thus terminated, the action of the Department of November 30, 1894, is adhered to, and no further or other action will be taken with reference to said lands.

It seems hardly necessary to repeat that an expression of opinion by Government officials, based upon a state of facts which both they and the persons whose communications called them forth at that time believed to be true, contains no element of estoppel, when it afterwards appears that the facts were otherwise.

Moreover, none of the communications relied on, except that in answer to the letter of R. E. Lee Wilson of 1892, was addressed to any person now claiming an estoppel. They were *res inter alios*; and in *Chapman & Dewey Land Company v. Bigelow*, 206 U. S. 41, 45, this court held that the letter of Secretary Hitchcock of November 17, 1902, was properly excluded as evidence on that ground.

C. Appellant contends also that the Government is estopped by reason of the fact that the Secretary of the Interior would not enter into the compromise with the State until the State by legislative enactment agreed to accept the field notes of the

Government surveys as conclusive evidence of the character of the lands for the purposes of the adjustment; that, as the original field notes showed the land in controversy was a lake, the Government could not, after the compromise, in good faith insist that the field notes were erroneous and claim the lands as belonging to the United States. To these contentions there are two answers:

*First.* The agreement to abide by the field notes of the Government surveys did not deprive the land department of jurisdiction to investigate and correct erroneous or fraudulent surveys. The State of Michigan shortly after the date of the swamp land grant enacted a law adopting the surveys on file in the surveyor general's office as the basis of adjustment. Referring to that statute, this court, in *Michigan Land and Lumber Co. v. Rust*, 168 U. S. 589, 602, said:

\* \* \* The effect of this legislative action was not to make an erroneous survey conclusive nor to preclude the land department from the exercise of its unquestioned jurisdiction to correct surveys, but simply to accept the field notes finally approved as the evidence of the lands passing under the grant, leaving to the land department to make any needed corrections in the surveys and field notes.

Moreover, the Arkansas agreement did not even purport to bind the parties to an acceptance of the field notes of the *original* surveys. The language of the last State statute on the subject is that the State

agrees to accept as conclusive the "original field notes of the survey *or re-survey* of such lands by the United States in all cases \* \* \* where such field notes show conclusively the naturally wet, swampy or overflowed, or the naturally non-wet, non-swampy, or non-overflowed character of such lands." (Act April 8, 1891, Acts of Arkansas, 1891, pp. 199-201.) It is very apparent that the act contemplated possible future surveys or resurveys. There is nothing in the language or in the subject-matter to confine the words "survey or resurvey" to surveys and resurveys then already made and approved.

Again, an agreement to accept the field notes of the Government surveys necessarily applied only to *lands*, surveyed, or to be surveyed. This act itself speaks in terms of "lands," "naturally wet, swampy or overflowed," etc., and says nothing as to lakes or field notes describing lakes. Indeed, neither this act nor the Swamp Land Act itself has anything to do with lakes or the lands under lakes. If a swamp land patent carries title to land under a lake, it is not because that land is regarded as swamp, but because, by a rule of law prevailing in the State, a conveyance of riparian lands is held to carry the lake bed in front thereof. The fact that the riparian lands happen to be swamp has nothing to do with it. A Government patent, under the appropriate land laws, for high and dry riparian land does the same.

*Second.* These very lands, and others in similar case, were taken into consideration by the compromise of 1898 and compensation was allowed for



them by the Government. Appended to Senate Report No. 76, 54th Congress, first session, recommending the passage of the compromise bill, is a statement of the account finally agreed upon by the parties. Paragraph 13, on the credit side, reads as follows:

By 278,835.248 acres of land,  
being about one-fourth of 906,260  
acres claimed as swamp land in  
place and as a basis of land and  
cash indemnity, under acts of  
Mar. 2, 1855, and Mar. 3, 1857,  
at \$1.25 per acre, in satisfac-  
tion of the whole claim..... \$348,544.06

On page 6, paragraph 13, being part of the appendix to the report, it appears that this total of 906,260 acres was made up, as shown by an affidavit by the State agent, Mr. Riley, of 506,260 acres, already listed, and 400,000 acres not yet listed, "including about 50,000 acres of what are known as sunk lands" described as "heavily timbered and not yet surveyed." It further appears in the same paragraph that of the total acreage thus made up by lumping together the State's extreme claims, the Government agents agreed to allow credit for "about one-fourth" of the lands so claimed, and the settlement was consummated upon that basis.

It thus appears that in the compromise of 1898 the State acknowledged that it had never received title to the sunk lands but that it claimed and received compensation for them as unsurveyed swamp lands relinquished to the Government.

## VII.

**Appellant is not a bona fide purchaser.**

Little need be said upon this topic. The District Court in its opinion (pp. 106-108), after referring to the conceded fact that R. E. Lee Wilson owned practically all the stock of the corporation except such as was necessary to qualify others for directors, and to the further fact that he purchased the lands shortly after the consummation of the compromise, sets out at length his testimony as to what he knew concerning the title and the status of the lands in controversy (see R. 11), and reaches this conclusion (p. 108):

The court finds from the evidence that the defendant is not a bona fide purchaser without notice, and therefore is not entitled to protection as such, without deciding whether in view of the other findings, even had it been a bona fide purchaser without notice, that would have aided it.

The Circuit Court of Appeals in affirming the decree said (R. 126):

As above noted, appellant relies also on the claim of estoppel and that it is a bona fide purchaser. The facts in both of those respects are sufficiently stated and discussed in the opinion of Judge Trieber (214 Fed. 630) and in which opinion in relation thereto we concur.

It appears, therefore, that the two courts below concurred in finding as a fact, from the evidence, that the appellant was not an innocent purchaser.

These concurring findings are abundantly justified by the record and the inferences which must be drawn therefrom. Mr. Wilson, as shown by his letter of December 10, 1892, to the Commissioner of the General Land Office (heretofore referred to—R. 86), was contemplating the purchase of these lands. He was born within 6 miles of them and lived in that part of Mississippi County all his life (R. 5). He undoubtedly was familiar with the title. He knew more about the lands than did the Government itself, and he of course is chargeable with a knowledge of the law applicable to the situation. Moreover, a purchaser of lands is chargeable with a knowledge of whatever an inspection of the physical conditions thereof would have disclosed affecting the title. *Washington Securities Co. v. United States*, 234 U. S. 76; *Winona etc. R. R. Co. v. United States*, 165 U. S. 483; *Security Land and Exploration Co. v. Burns*, 193 U. S. 167; *United States v. Krueger* (C. C. A. 8th Cir.), 228 Fed. 97, 102.

#### VIII.

**This suit is not barred by the six-year statute of limitations. (Act of March 3, 1891, 26 Stat. 1095.)**

The suit is one to quiet title, not to cancel a patent issued by the United States. The Government does not in any possible aspect of the case question the validity of the patent issued to the State of Arkansas, nor has it raised any question as to the effect of the confirmatory act of 1857 upon the lands to which it applies. The questions litigated are purely questions

as to what was included in the patent or the act of confirmation. The case is similar in these aspects to that of *United States v. Chandler-Dunbar Company*, 209 U. S. 447. Counsel apparently places his main reliance upon the latter case, but, as we understand, it is practically conclusive against him. In that case, as appears from the opinion (p. 449), the United States contended, first, that the patent was void because the land had been reserved for public purposes; and, second, that, even if it was valid, the islands in controversy did not pass under it. On the first branch of the case the court held, in substance (p. 450), that while the suit was in form one to remove cloud from the title, the Government was barred by the statute from maintaining that the patent was void. That, however, did not end the case. The court then went on to discuss the second question, namely, what passed by the patent? That question, it will be noted, is the only question involved in this case. The court, after considering the matter at length, there held that the patent taken in connection with the rule of law prevailing in Michigan carried with it the title to the islands in controversy.

#### CONCLUSION.

The lands in controversy were never surveyed until long after the compromise. They were never selected by the State or confirmed or patented to it, and were not confirmed to the St. Francis Levee District by the compromise agreement and legislation. On the contrary, the inchoate title was relinquished

to the United States by the compromise before appellant or any of its predecessors attempted to purchase them from the Levee District. The decree should therefore be affirmed.

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